

1 Zachary Nightingale (California Bar # 184501)
2 Chloe Czabaranek (California Bar #336258)
3 Van Der Hout LLP
4 360 Post St., Suite 800
5 San Francisco, CA 94108
6 Telephone: (415) 981-3000
7 Facsimile: (415) 981-3003
8 ndca@vblaw.com

9 *Attorney for Petitioner-Plaintiff*
10 N. Y. V. D.

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 N. Y. V. D.,

14 Petitioner-Plaintiff,

15 v.

16 Ernesto SANTACRUZ JR., Acting Field
17 Office Director of Los Angeles Office of
18 Detention and Removal, U.S. Immigrations
19 and Customs Enforcement; U.S. Department
20 of Homeland Security; Todd M. LYONS,
21 Acting Director, Immigration and Customs
22 Enforcement, U.S. Department of Homeland
23 Security; Kristi NOEM, in her Official
24 Capacity, Secretary, U.S. Department of
25 Homeland Security; Pam BONDI, in her
26 Official Capacity, Attorney General of the
27 United States; and Fereti SEMAIA, Facility
28 Administrator at Adelanto ICE Processing
Center, Adelanto, California;

Respondents-Defendants.

Case No.

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

Challenge to Unlawful Incarceration
Under Color of Immigration
Detention Statutes; Request for
Declaratory and Injunctive Relief

Petitioner-Plaintiff's Petition for Writ of Habeas Corpus
and Complaint for Declaratory and Injunctive Relief

Case No.

INTRODUCTION

1. Petitioner-Plaintiff, N.Y.V.D. (“N.Y.V.D.” or “Petitioner”), was paroled out of Respondents’ custody over three years ago after she came to the U.S. from Nicaragua seeking refuge. She was permitted to file her application for asylum, granted a work permit, and followed all of the laws and procedures required of her. All of that changed when Respondents suddenly and unlawfully detained her, when she presented herself at a regularly scheduled check-in, and they are now trying to deny her the right to seek asylum and enjoy the constitutional protections applicable to her by virtue of her three years present in the United States.

2. There, N.Y.V.D., by and through her undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel the U.S. Department of Homeland Security’s (“DHS”) Immigration and Customs Enforcement (“ICE”) to release her from their civil immigration custody, where she has been unlawfully detained since November 24, 2025, without first being provided a due process hearing to determine whether her detention is justified. N.Y.V.D. must be released from custody unless and until DHS proves that she is a flight risk or a danger to the community.

3. In 2022, N.Y.V.D. fled Nicaragua to avoid future persecution and torture from the Nicaraguan authoritarian regime, which she actively and publicly opposed.

4. On or about November 19, 2022, N.Y.V.D. entered the United States without inspection and then presented herself to U.S. immigration authorities to be processed. Hours later, DHS released her from its custody by paroling her into the United States under Immigration and Nationality Act (INA) § 212(d)(5)—which necessarily required a determination that N.Y.V.D. was neither a flight risk nor a danger to the community. *See Declaration* of Zachary Nightingale (“ZN Decl.”), at Exhibit A.

5. As a condition of her parole, N.Y.V.D. reported to the San Francisco ICE Field Office. *See* ZN Decl., at Exh. B. On information and belief, ICE issued

Petition for Writ of Habeas Corpus 1 Case No.
and Complaint for Declaratory and Injunctive Relief

1 N.Y.V.D. a Form I-220, Order of Release on Recognizance (ORR), in accordance
2 with INA § 236, 8 U.S.C. § 1226, and N.Y.V.D. has attended every scheduled ICE
3 check-in.

4 6. On information and belief, DHS failed to file Form I-862, Notice to Appear
5 (NTA) and initiate removal proceedings against N.Y.V.D. First, the Automated Case
6 Information System (ACIS), which provides basic information about the status of
7 cases before immigration court, reflects no records for N.Y.V.D.'s alien registration
8 number (A-number). Second, N.Y.V.D. was not scheduled for a hearing before
9 immigration court. Third, N.Y.V.D. did not receive her NTA.

10 7. Furthermore, in 2023, N.Y.V.D. filed Form I-589, Application for Asylum,
11 with the U.S. Citizenship and Immigration Services (USCIS), based on her well-
12 founded fear of return to Nicaragua. *See* ZN Decl., at Exh. C. Her affirmative
13 processing by USCIS rather than the Immigration Court supports that removal
14 proceedings were not initiated. N.Y.V.D.'s asylum application was properly filed
15 because as a result of that application, USCIS granted her work authorization
16 pursuant to that pending asylum application. After her detention, USCIS attempted
17 to notify her, by uploading to her USCIS portal, a notice that after all this time, her
18 application was being rejected due to her now being placed in expedited removal
19 proceedings. The legality of this is yet unresolved. *See* ZN Decl., at Exh. D.

20 8. For over three years since being paroled into the United States, and for over
21 two years since being granted work authorization, N.Y.V.D. has complied with her
22 check-ins, worked hard to support herself, connected with friends and family in the
23 United States, and fostered a community [REDACTED]

24 [REDACTED] She was lawfully employed by [REDACTED]

25 [REDACTED]

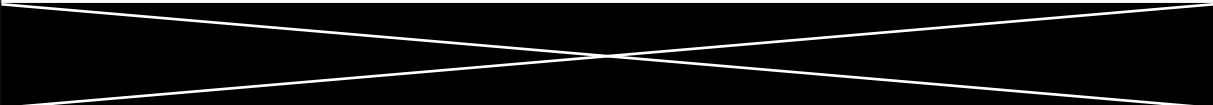
1 9. On information and belief, on January 25, 2025, officials in the new Trump
 2 administration directed senior ICE officials to increase arrests to meet daily quotas.
 3 Specifically, each field office was instructed to make 75 arrests per day.¹

4 10. On November 24, 2025, when N.Y.V.D. reported to the San Francisco ICE
 5 Office for her regular check-in, ICE suddenly and unlawfully detained her. N.Y.V.D.
 6 asked for an explanation for the sudden and unwarranted arrest, and ICE officers
 7 informed her that they were following the new administration's orders, which
 8 instructed ICE to detain and expedite removal proceedings for applicants whose
 9 cases were pending without a hearing, but that from inside detention, she would see
 10 an immigration judge within five to seven days. ICE officers provided N.Y.V.D.
 11 with a copy of her warrant for arrest, which stated that pursuant to INA § 236 (8
 12 C.F.R. § 1226), she would be taken into custody, allegedly for the pendency of her
 13 ongoing removal proceedings. Notably, the warrant is silent as to whether a charging
 14 document initiating removal proceedings against N.Y.V.D. was executed.
 15 Thereafter, ICE transferred N.Y.V.D. to the Adelanto ICE Processing Center.

16 11. On November 26, 2025, two days after N.Y.V.D. was unlawfully arrested,
 17 USCIS uploaded a Notice of Dismissal into N.Y.V.D.'s online USCIS account,
 18 informing her that because DHS records indicated that she was subject to expedited
 19 removal, her asylum application was dismissed. *See* ZN Decl., at Exh. D. The
 20 dismissal also stated that if she was afraid of her life—which to be clear, USCIS and
 21 DHS already knew, as they knew that she had an application for asylum pending—
 22 then she must affirmatively request a Credible Fear Interview (“CFI”) from inside
 23 detention. *Id.* Undersigned Counsel and N.Y.V.D. learned about this dismissal on
 24 December 4, and promptly requested her CFI.

25
 26
 27 ¹ *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington*
 28 *Post* (Jan. 26, 2025), available at:
<https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 12. On December 10, 2025, N.Y.V.D. underwent her CFI. The officer conducting
2 her CFI repeatedly interrupted N.Y.V.D. during the interview and did not allow her
3 to discuss some of the most vital aspects of her claim—including that 

4 
5
6 13. On December 12, 2025, USCIS issued a negative CFI determination.

7 14. Currently, N.Y.V.D. is awaiting a hearing before the Immigration Judge (IJ)
8 where she will challenge the negative fear determination. Negative fear hearings are
9 expedited by nature, often resulting in severe due process violations. If an IJ upholds
10 the negative determination, the applicant will be deported without further process.

11 15. For over three years, N.Y.V.D. attended every scheduled check-in, yet in an
12 effort to expedite her deportation from the United States, or presumably remedy
13 DHS's own oversight in failing to initiate her removal proceedings, or to meet a
14 quota, ICE unilaterally, unwarrantedly, and unlawfully revoked her release. Now,
15 N.Y.V.D. finds herself in civil detention, deprived of her due process, facing the
16 imminent threat of her removal—a removal that will further separate her from her
17 family, community, and employment in the United States, and result in a deportation
18 to a country where she has a well-founded fear that the government will imprison
19 her on arrival, torture, and sexually assault her based on her political opinion and
20 relationship to her family. This Court's urgent intervention is therefore necessary to
21 uphold N.Y.V.D.'s due process rights and order her immediate release from
22 detention, and enjoin any further re-detention without a pre-deprivation hearing
23 before a neutral adjudicator.

24 16. By statute and regulation, as interpreted by the Board of Immigration Appeals
25 (BIA), ICE has the authority to revoke a non-citizen's conditional parole and arrest
26 them, but only where there has been a change in circumstances since the individual's
27 release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *see Panosyan v. Mayorkas*, 854
28 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances . . . ICE

cannot redetain Panosyan.”); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of N.Y.V.D.’s case, due process required notice and a hearing, prior to any revocation of her release, at which she was afforded the opportunity to advance her arguments as to why she should not be detained.

17. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where N.Y.V.D.’s detention was already found to be unnecessary to serve its purpose.

18. Under these circumstances, DHS was required to afford N.Y.V.D. the opportunity to advance arguments in favor of her freedom before it robbed her of her liberty. She must therefore be released from custody unless and until DHS proves to a neutral decisionmaker by clear and convincing evidence that she is a flight risk or a danger to the community. During any custody redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk that DHS may establish.

19. Each day that N.Y.V.D. is detained, she and her family and community suffer irreparable harm including deprivation of her constitutional rights, emotional distress, and economic hardship. She will suffer even more devastating harms if she remains in custody, including the loss of her ability to support herself. N.Y.V.D. thus respectfully requests that the Court order her release so that she may pursue her application for asylum in removal proceedings in a non-detained setting.

CUSTODY

20. Petitioner is currently detained by DHS at the Adelanto ICE Processing Center in Adelanto, California, where she was transferred after ICE officers arrested her during her routine check-in at the San Francisco Field Office.

JURISDICTION

21. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 et seq., All Writs Act; 28 U.S.C. § 2241 et seq., habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law, as Petitioner is detained under color of the authority of the United States, and such custody is in violation of the Constitution, laws, regulations, and, or treaties of the United States.

22. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, the Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue a writ of habeas corpus for their immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

REQUIREMENTS OF 28 U.S.C. § 2243

23. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

24. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England,

1 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
 2 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

3 25.Habeas corpus must remain a swift remedy. Importantly, “the statute itself
 4 directs courts to give petitions for habeas corpus ‘special, preferential consideration
 5 to insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120
 6 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any
 7 action creating the perception “that courts are more concerned with efficient trial
 8 management than with the vindication of constitutional rights.” *Id.*

9 VENUE

10 26.Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because
 11 the Respondents are employees or officers of the United States, acting in their
 12 official capacity; because Petitioner is currently detained in the Central District of
 13 California; and because there is no real property involved in this action.

14 EXHAUSTION OF ADMINISTRATIVE REMEDIES

15 27.For habeas claims, exhaustion of administrative remedies is prudential, not
 16 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential
 17 exhaustion requirement if “administrative remedies are inadequate or not
 18 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable
 19 injury will result, or the administrative proceedings would be void.” *Id.* (quoting
 20 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks
 21 omitted)). Requiring N.Y.V.D. to exhaust administrative remedies is futile and will
 22 result in irreparable injury, as every day that she remains detained causes irreparable
 23 harm.

24 28.No statutory exhaustion requirements apply to N.Y.V.D.’s claim of unlawful
 25 custody in violation of her due process rights, and there are no administrative
 26 remedies that she needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v.*
 27 *Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise
 28

1 because the agency does not have jurisdiction to review” constitutional claims); *In*
2 *re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

3 **PARTIES**

4 29. Petitioner N.Y.V.D. was born in Nicaragua in 1988. She was taken into DHS
5 custody and then paroled into the United States and out of DHS custody in 2022,
6 and was subsequently placed on an Order of Release of Recognizance. Petitioner is
7 currently in ICE custody at Adelanto ICE Processing Center.

8 30. Respondent Ernesto SANTRACRUZ JR. is the Acting Field Office Director
9 of ICE, in Los Angeles, California and is named in his official capacity. ICE is the
10 component of the DHS that is responsible for detaining and removing noncitizens
11 according to immigration law and oversees custody determinations. In his official
12 capacity, he is the legal custodian of Petitioner.

13 31. Respondent Todd M. LYONS is the Acting Director of ICE and is named in
14 his official capacity. Among other things, ICE is responsible for the administration
15 and enforcement of the immigration laws, including the removal of noncitizens. In
16 his official capacity as head of ICE, he is the legal custodian of Petitioner.

17 32. Respondent Kristi NOEM is the Secretary of the DHS and is named in her
18 official capacity. DHS is the federal agency encompassing ICE, which is responsible
19 for the administration and enforcement of the INA and all other laws relating to the
20 immigration of noncitizens. In her capacity as Secretary, Respondent Noem has
21 responsibility for the administration and enforcement of the immigration and
22 naturalization laws pursuant to section 402 of the Homeland Security Act of 2002,
23 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).
24 Respondent Noem is the ultimate legal custodian of Petitioner.

25 33. Respondent Pam BONDI is the Attorney General of the United States and the
26 most senior official in the U.S. Department of Justice (DOJ) and is named in her
27 official capacity. She has the authority to interpret immigration laws and adjudicate
28

1 removal cases. The Attorney General delegates this responsibility to the EOIR,
2 which administers the immigration courts and the BIA.

3 34. Respondent Fereti SEMAIA is the Facility Administrator of Adelanto ICE
4 Processing Center where Petitioner is being held. Semaia oversees the day-to-day
5 operations at Adelanto and acts at the Direction of Respondents Lyons, Noem, and
6 Albarran. Semaia is a custodian of Petitioner and is named in their official capacity.

7 **STATEMENT OF FACTS**

8 35. N.Y.V.D. was born in Nicaragua in 1988. She fled Nicaragua in 2022 to avoid
9 future persecution and torture at the hands of Nicaraguan's authoritarian regime,
10

11 36. On or about November 19, 2022, N.Y.V.D. entered the United States without
12 inspection and soon thereafter presented herself to U.S. immigration authorities.
13 Hours later, DHS paroled her from its custody and into the United States under INA
14 § 212(d)(5). *See* ZN Decl., at Exh. A. As a condition of N.Y.V.D.'s parole, ICE
15 ordered her to report to the ICE office nearest to her place of residence. N.Y.V.D.
16 reported to the San Francisco ICE Office. *See* ZN Decl., at Exh. B.

17 37. On information and belief, ICE issued N.Y.V.D. a Form I-220, ORR (order
18 of release on recognizance), pursuant to INA § 236 (8 U.S.C. § 1226), and she has
19 attended every scheduled check-in.

20 38. On information and belief, DHS never filed N.Y.V.D.'s NTA with the
21 Immigration Court, and thus her removal proceedings were not initiated. Her A-
22 number is not registered with EOIR and she has not been scheduled for an
23 immigration court hearing.

24 39. In 2023, N.Y.V.D. affirmatively filed Form I-589, Application for Asylum,
25 with USCIS. *See* ZN Decl., at Exh. C. USCIS accepted the application. *Id.*
26 Thereafter, she applied for and received work authorization pursuant to her pending
27 application for asylum.
28

1 40. Since being paroled in 2022, N.Y.V.D. has continued to comply with the
2 terms of her ORR by regularly attending all her check-ins at the San Francisco ICE
3 Field Office. She also applied for and received a work authorization document. She
4 has had no arrests or convictions. N.Y.V.D. has worked hard to support herself, build
5 a community, and foster relationships in the United States.

6 41. On information and belief, on January 25, 2025, officials in the new Trump
7 administration directed senior ICE officials to increase arrests to meet daily quotas.
8 Specifically, each field office was instructed to make 75 arrests per day.²

9 42. On November 24, 2025, when N.Y.V.D. reported to the San Francisco ICE
10 Office for her regular check-in, ICE suddenly and unlawfully detained her. N.Y.V.D.
11 asked for an explanation for the sudden and unwarranted arrest, and ICE officers
12 informed her that they were following the new administration's orders, which
13 instructed ICE to detain and expedite removal proceedings for applicants whose
14 cases were pending without a hearing, but that from inside detention, she would see
15 an immigration judge within five to seven days. ICE officers provided N.Y.V.D.
16 with a copy of her warrant for arrest, which stated that pursuant to INA § 236 [8
17 C.F.R. § 1226], she would be taken into custody for the pendency of her ongoing
18 removal proceedings.

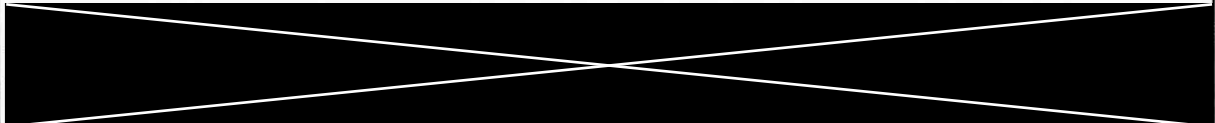
19 43. Thereafter, ICE transferred N.Y.V.D. to the Adelanto ICE Processing Center.

20 44. On November 26, 2025, two days after N.Y.V.D. was unlawfully arrested,
21 USCIS uploaded a Notice of Dismissal into N.Y.V.D.'s online USCIS account,
22 informing her that because DHS records indicated that she was subject to expedited
23 removal, her asylum application was dismissed. *See* ZN Decl., at Exh. D. The
24 dismissal also stated that if she was afraid of her life, then she must affirmatively
25 request a Credible Fear Interview ("CFI") from inside detention. *Id.*

26 ² *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington*
27 *Post* (Jan. 26, 2025), available at:
28 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 45. On December 4, undersigned Counsel and N.Y.V.D. learned about this
2 dismissal, and promptly requested her CFI.

3 46. On December 10, 2025, N.Y.V.D. underwent her CFI. The officer conducting
4 her CFI repeatedly interrupted N.Y.V.D. during the interview and did not allow her
5 to discuss some of the most vital aspects of her claim—including that the



8 47. On December 12, 2025, USCIS issued N.Y.V.D. a negative CFI
9 determination. She subsequently requested a review of her negative determination
10 before the IJ. Currently, she is awaiting this hearing.

11 **LEGAL BACKGROUND**

12 48. On November 24, 2025, ICE officers suddenly and unlawfully detained
13 N.Y.V.D. while she attended her regular check-in appointment at the San Francisco
14 ICE Office, just as she has done for the past nearly-three years. N.Y.V.D. had been
15 living in the United States for over three years, was working subject to employment
16 authorization, building relationships, and awaiting her asylum interview. Although
17 in some circumstances the decision to detain an individual may be within ICE's
18 discretion, this is not one of those, as N.Y.V.D. was already preciously released from
19 custody, which created an implicit promise that her liberty will only be revoked if
20 she fails to comply with the conditions for release. Thus, she has a protected liberty
21 interested in remaining out of custody. Her detention is therefore unconstitutional
22 and illegal because it does not comport with the U.S. Constitution or the regulations,
23 and she was otherwise not provided any pre-deprivation hearing before ICE re-
24 detained her.

25 49. Intervention from this Court is therefore required to ensure that N.Y.V.D. does
26 not continue to suffer irreparable harm in the form of unjustified and prolonged
27 detention in violation of her due process.

28 **Right to a Hearing Prior to Re-incarceration**

1 50. Civil detention in United States law is the exception, not the rule, and even
2 where permitted by law or regulation, must comport with fundamental constitutional
3 limitations. By statute and regulation, ICE has the ability to unilaterally revoke any
4 noncitizen's conditional parole and arrest the noncitizen at any time. 8 U.S.C. §
5 1226(b), 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory
6 language granting ICE the power to revoke an immigration bond "at any time," 8
7 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA recognized an
8 implicit limitation on ICE's authority to re-arrest noncitizens absent a change of
9 circumstance. *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*,
10 ICE has no authority to re-detain an individual absent changed circumstances.
11 *Panosyan*, 854 F. App'x at 788 ("Thus, absent changed circumstances ... ICE cannot
12 redetain Panosyan."). Any change in circumstances must be "material." *Saravia*, 280
13 F. Supp. 3d at 1197.

14 51. The Government's authority to make the unilateral decision to arrest a
15 noncitizen previously released is proscribed by the Due Process Clause because "it
16 is well established that the Fifth Amendment entitles aliens to due process of law in
17 deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). It is equally
18 undisputed that "[f]reedom from imprisonment—from government custody,
19 detention, or other forms of physical restraint—lies at the heart of the liberty that
20 [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Noncitizens on pre-
21 parole, parole, or probation status have a protected liberty interest in remaining out
22 of custody. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL
23 2337099, at *13 (D. Ariz. Aug. 11, 2025) (citations omitted). When the government
24 grants a noncitizen parole into the country, it creates a liberty interest intimately tied
25 to freedom from imprisonment. *Alegria Palma v. LaRose*, 25-cv-1942, ECF No. 14,
26 2025 U.S. Dist. LEXIS 213718 (S.D. Cal. Aug. 11, 2025) (finding that "continued
27 freedom after release on own recognizance" was a core liberty interest).

52. Moreover, federal courts throughout the country have recognized that individuals such as Petitioner here who have been present in the United States for more than two years, released on their own recognizance, obtained permission to work, and have built a life outside of detention, have a substantial private interest in being out of custody and their detention violates that interest. *See C.A.R.V. v. Wofford*, No. 25-cv-01395-JLT-SKO, 2025 WL 3059549, at *10 (E.D. Cal. Nov. 1, 2025) (PI granted as the petitioner established he had due process rights and his detention was “not ‘mandatory’ . . . where petitioner has been present in the United States for approximately four years and was released on his own recognizance well before Respondents adopted the new interpretation of the [1225(b)] governing statutes.”); *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *7 (E.D. Cal. Oct. 9, 2025) (same) (citing cases); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025) (granting PI for the petitioner who was apprehended at the border, released from custody under supervisory conditions for more than two years, and who was arrested after the government attempted to “place her in expedited removal proceedings, despite serious questions as to the lawfulness of such a decision...”).

53. To protect that interest, federal district courts in California and beyond have repeatedly found that the demands of due process and the limitations on DHS’s authority to revoke a noncitizen’s release set out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond or parole, before ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL

1 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm
2 if re-detained, and due process required a hearing prior to any re-detention);
3 *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal.
4 May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's
5 ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*,
6 No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

7 54. Applying these principles, it is clear that N.Y.V.D. has a protected liberty
8 interest in remaining out of custody, and that her revocation of her parole and ORR
9 required notice, hearing, and the opportunity to be heard *prior* to any revocation.
10 During the more than three years since N.Y.V.D. entered the United States and was
11 initially apprehended and released by ICE, N.Y.V.D. began to build her life—she
12 entered into a romantic relationship with her U.S. citizen boyfriend, whom she plans
13 to marry, connected with family, secured employment, and even fostered
14 relationships with co-workers and other union members, including SEIU leadership.
15 These extensive relations of support and interdependence underscore the high stakes
16 of her liberty.

17 55. N.Y.V.D. was never provided an interview or adjudication of her asylum
18 application. She was never informed of any change in her immigration status. And
19 she never violated any rules, regulations or procedures. Rather, she fell victim to
20 changing political winds that, unlawfully, are not controlled by constitutional
21 protections or guardrails.

22 56. Further, any re-arrest required that DHS establish a “material” change in
23 circumstances to legally justify N.Y.V.D.’s detention, which DHS failed to do.
24 *Matter of Sugay*, 17 I&N Dec. at 640; *Panosyan*, 854 F. App’x at 788; *Saravia*, 280
25 F. Supp. 3d at 1197. A legal justification would be to prevent danger or flight risk.
26 *See Zadvydas*, 533 U.S. at 699 (purpose of detention is “assuring the alien’s presence
27 at the moment of removal”); *Id.* at 690–91 (discussing twin justifications of
28 detention as preventing flight and protecting the community). N.Y.V.D. does not

pose a danger or flight risk that warrants detention, and thus her detention is not reasonably related to prevent danger or flight risk. This is especially so because the ICE *already* released N.Y.V.D. after a few hours of detention in 2022, which necessarily required a determination then that she was neither a flight risk nor a danger to the community, and nothing suggests that has changed. *Sun v. Santacruz*, No. 5:25-cv-02198-JLS-JC, 2025 WL 2730235, at *6 (C.D. Cal. Aug. 26, 2025) (finding that neither risk was present where ICE first released the petitioner upon finding, at least implicitly, that the petitioner was neither a flight risk nor a danger to the community, and absent new facts to indicate risk of flight or to the community); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (reaching a similar conclusion where the petitioner “attended every check-in and court hearing since he arrived in the United States”); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (similar).

57. Further, since her release on her own recognizance, N.Y.V.D. has continued to demonstrate that she poses neither a flight risk nor a danger to the community. *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025). She has diligently attended every check-in with ICE, *id.*, diligently filed her asylum application, and is working under work authorization pursuant to her pending asylum application. N.Y.V.D. has no criminal record and has become a deeply valued member of her community, is currently in a committed long-term relationship with her U.S. citizen boyfriend, whom she has plans to marry, has made friends and developed a close relationships with coworkers at [REDACTED] and the [REDACTED] valuable member. Each of these factors point to a lack of flight risk. *See M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (cleaned up) (“Any potential government concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of Petitioner-Plaintiff’s strong family ties and his continued employment as a driller,

1 as well as his actions in posting a bond and complying with the conditions of
2 release.”). The government does not claim that any material circumstances have
3 changed that would warrant reassessment of N.Y.V.D.’s risk of flight or
4 dangerousness, and it has articulated no other reason for her detention. If the
5 government wished to detain her, it need only have filed her NTA, began
6 proceedings against N.Y.V.D., and provide a hearing before a neutral
7 decisionmaker.

8 58. Thus, ICE revoked N.Y.V.D.’s ORR without a showing in changed
9 circumstances related to her case. The only circumstance that ICE purported was
10 N.Y.V.D.’s warrant, which presumably existed since 2022, when she was first
11 apprehended, and that the new administration’s directives were to expedite her
12 removal proceedings. Therefore, the government violated N.Y.V.D.’s Due Process
13 Clause of the Constitution when it decided to arbitrarily revoke her release and arrest
14 her in November 2025 without first providing her with a pre-deprivation hearing
15 before a neutral adjudicator to determine whether circumstances had materially
16 changed since November 2022.

17 **Petitioner’s Protected Liberty Interest in Her Release**

18 59. N.Y.V.D. has a liberty interest in remaining out of immigration custody,
19 which is protected by the Due Process Clause: “Freedom from imprisonment—from
20 government custody, detention, or other forms of physical restraint—lies at the heart
21 of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

22 60. For over three years, since 2022, N.Y.V.D. has exercised that freedom
23 pursuant to her ORR. She thus retains a weighty liberty interest under the Due
24 Process Clause of the Fifth Amendment in avoiding re-incarceration, which is not
25 diminished by the supervised nature of her release. *Zadvydas*, 533 U.S. at 679 (“[A]
26 noncitizen’s liberty interest is not diminished by their lack of a legal right to live at
27 large, for the choice at issue here is between imprisonment and supervision
28 under release conditions that may not be violated and their liberty interest is strong

1 enough to raise a serious constitutional problem with indefinite detention.”); *see also*
2 *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpnelli*, 411 U.S. 778,
3 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972).

4 61. Just as importantly, N.Y.V.D. has continued presenting herself before ICE for
5 her regular check-in appointments for over three years, where ICE has not sought to
6 re-arrest her during this time. ICE instead gave her future dates and times to appear
7 again each year, with which N.Y.V.D. continued to comply.

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

19 63. This basic principle—that individuals have a liberty interest in their release—
20 has been reinforced by both the Supreme Court and the circuit courts on numerous
21 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-
22 parole program created to reduce prison overcrowding have a protected liberty
23 interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding
24 that individuals released on felony probation have a protected liberty interest
25 requiring pre-deprivation process). As the First Circuit has explained, when
26 analyzing the issue of whether a specific conditional release rises to the level of a
27 protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
28 conditional release in the case before them with the liberty interest in parole as

1 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st
2 Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v.*
3 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact
4 free of physical confinement—even if that freedom is lawfully revocable—has a
5 liberty interest that entitles him to constitutional due process before he is re-
6 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and
7 *Morrissey*, 408 U.S. at 482).

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

17 65. 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 it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887.
20 Just as in *Morrissey*, N.Y.V.D.’s release “enables h[er] to do a wide range of things
21 open to persons” who have never been in custody, including to live at home, work
22 with her community, and “be with family and friends and to form the other enduring
23 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

24 66. Since her parole and release from her brief custody in 2022, N.Y.V.D. has
25 complied with conditions of her release. She has been focused on rebuilding her life
26 and leaving the trauma and fear she endured in Nicaragua behind, including by
27 entering into a committed and romantic relationship with her U.S. citizen boyfriend,
28 whom she plans to marry, connecting with family and friends, securing employment,

1 and [REDACTED] Precedents from the Supreme Court
2 and the Ninth Circuit make clear that she has a strong liberty interest in her continued
3 release from detention.

4 **Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-**
5 **Detention**

6 67. N.Y.V.D. asserts that, here, (1) where her detention is civil, (2) where she has
7 diligently complied with ICE's reporting requirements on a regular basis for over
8 three years, (3) where ICE cannot point to any changed circumstances warranting
9 arrest, (4) where DHS has been aware, since 2022, that N.Y.V.D. was amendable to
10 being placed in removal proceeding, granted her release, and accepted her
11 application for asylum, and granted employment authorization and (5) where on
12 information and belief ICE officers arrested her merely to fulfill an arrest quota for
13 expedited removal, due process mandates that she was required to receive notice and
14 a hearing before a neutral adjudicator prior to any arrest or revocation of release.

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

1 requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
2 424 U.S. 319, 335 (1976)).

3 69. The Supreme Court “usually has held that the Constitution requires some kind
4 of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v.*
5 *Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case”
6 where post-deprivation remedies are “the only remedies the State could be expected
7 to provide” can post-deprivation process satisfy the requirements of due process. *Id.*
8 at 129. Moreover, it is only where “one of the variables in the *Mathews* equation—
9 the value of predeprivation safeguards—is negligible in preventing the kind of
10 deprivation at issue” that “the State cannot be required constitutionally to do the
11 impossible by providing predeprivation process,” and thus avoid providing pre-
12 deprivation process. *Id.*

13 70. Because, in this case, the provision of a pre-deprivation hearing was both
14 possible and valuable to preventing an erroneous deprivation of liberty, ICE was
15 required to provide N.Y.V.D. with notice and a hearing *prior* to any re-incarceration
16 and revocation of her ORR. *See Morrissey*, 408 U.S. at 481–82; *Haygood*, 769 F.2d
17 at 1355–56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 136–37; *see also*
18 *Youngberg v. Romeo*, 457 U.S. 307, 321–24 (1982); *Lynch v. Baxley*, 744 F.2d 1452
19 (11th Cir. 1984) (individuals awaiting involuntary civil commitment proceedings
20 may not constitutionally be held in jail pending the determination as to whether they
21 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in
22 favor of [Petitioner’s] liberty,” *Haywood*, 769 F.2d at 1357, and required a pre-
23 deprivation hearing before a neutral adjudicator, which ICE failed to provide.

24 71. Moreover, as discussed above, had ICE wanted N.Y.V.D. to appear for a
25 removal hearing, ICE need only have filed her NTA, began proceedings against
26 N.Y.V.D., and provide a hearing before a neutral decisionmaker.

27 **Petitioner’s Private Interest in Her Liberty is Profound**

1 72. Under *Morrissey* and its progeny, individuals conditionally released from
2 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408
3 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person
4 who is in fact free of physical confinement, even if that freedom is lawfully
5 revocable, has a liberty interest that entitles her to constitutional due process before
6 she is re-incarcerated—apply with even greater force to individuals like N.Y.V.D.,
7 who have been released pending civil removal proceedings, rather than parolees or
8 probationers who are subject to incarceration as part of a sentence for a criminal
9 conviction. Parolees and probationers have a diminished liberty interest given their
10 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin*
11 *v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee
12 context, the courts have held that the parolee cannot be re-arrested without a due
13 process hearing in which they can raise any claims they may have regarding why
14 their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-
15 92; *Hurd*, 864 F.3d at 683. This extends to noncitizens released from immigration
16 detention on pre-parole, parole, or probation. *See Pinchi*, 792 F. Supp. 3d at 1032;
17 *Diaz*, 2025 WL 1676854, at *2. “This most basic American principle—that
18 individuals placed at liberty are entitled to process before the government
19 reimprisons them—has particular meaning,” especially where the government has
20 already found N.Y.V.D.’s detention to be unnecessary. *See Rosado*, 2025 WL
21 2337099, at *12-13. Thus, N.Y.V.D. retains a truly weighty liberty interest prior to
22 her re-arrest.

23 73. What is at stake in this case for N.Y.V.D. is one of the most profound
24 individual interests recognized by our legal system: whether ICE may unilaterally
25 nullify a prior release decision and be able to take away her physical freedom, i.e.,
26 her “constitutionally protected interest in avoiding physical restraint.” *Singh v.*
27 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom
28 from bodily restraint has always been at the core of the liberty protected by the Due

1 Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*,
2 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
3 detention, or other forms of physical restraint—lies at the heart of the liberty that
4 [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

5 74. Thus, it is clear that there is a profound private interest at stake in this case,
6 which must be weighed heavily when determining what process she is owed under
7 the Constitution. *See Mathews*, 424 U.S. at 334-35.

8 **The Government’s Interest in Keeping Petitioner in Detention is Low and the**
9 **Burden on the Government to Release Her from Custody is Minimal**

10 75. The government’s interest in keeping N.Y.V.D. in detention without a due
11 process hearing is low, and when weighed against her significant private interest in
12 her liberty, the scale tips sharply in favor of releasing Petitioner from custody unless
13 and until the government demonstrates by clear and convincing evidence that she is
14 a flight risk or danger to the community. It becomes abundantly clear that the
15 *Mathews* test favors Petitioner when the Court considers that the process N.Y.V.D.
16 seeks—release from custody pending notice and a hearing regarding whether her
17 release should be revoked and she should be arrested, especially where ICE *already*
18 paroled and released her over *three years ago* and where nothing in the interim has
19 changed to warrant re-detention—is a standard course of action for the government.
20 In the alternative, providing N.Y.V.D. with a hearing before a neutral decisionmaker
21 to determine whether there is clear and convincing evidence that she is a flight risk
22 or danger to the community would impose only a *de minimis* burden on the
23 government, because the government routinely provides this sort of hearing to
24 individuals like N.Y.V.D.

25 76. As immigration detention is civil, it can have no punitive purpose. The
26 government’s only interests in holding an individual in immigration detention can
27 be to prevent danger to the community or to ensure a noncitizen’s appearance at
28 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the

1 government cannot plausibly assert that it had a sudden interest in detaining
2 N.Y.V.D. due to alleged dangerousness, or that she would not appear at her
3 hearing—there was never a hearing for her to attend, but she has consistently
4 appeared at her ICE check ins and also attended her biometrics appointment before
5 USCIS, reflecting that N.Y.V.D. would comply with any request the government
6 makes for her appearance. The government thus cannot establish that her
7 circumstances have materially changed since her parole and release from ICE
8 custody in 2022—three years before her re-arrest.

9 77.First, as discussed above, N.Y.V.D. has worked hard to build ties in this
10 country—she intends to marry her U.S. citizen boyfriend, is active in her labor
11 union, and has held employment with [REDACTED] Second, she
12 has no criminal history. Third, she has diligently attended every check-in with ICE.

13 78. In sum, N.Y.V.D.’s arrest constitutes a violation of due process because there
14 was no material change in circumstances that establishes she is a danger to the
15 community here in the United States where she has otherwise lived a law-abiding
16 life and has been awaiting the adjudication of her asylum case for almost three years.
17 Under the BIA and ICE’s own stated policies, any revocation of parole and arrest
18 pursuant to § 1226(b) requires “a *material* change in circumstances.” *Saravia*, 280
19 F. Supp. 3d at 1197. If DHS believed that there was a material change in
20 circumstances that would justify revoking N.Y.V.D.’s release, ICE would have
21 moved to detain her (subject to the demands of due process) at any point during her
22 several check-ins before the San Francisco ICE Office. DHS would have also moved
23 to file her NTA and begin her removal proceedings. DHS did neither. Their failure
24 to move to arrest or begin her removal proceedings between 2022 and 2025
25 illustrates the absurdity of any potential claim that there is a material change in
26 circumstances that allows the government to revoke N.Y.V.D.’s release and detain
27 her without affording her due process. At the very least, N.Y.V.D. had the right to a
28

1 hearing prior to her detention where she could present her argument as to why there
2 was no justification for the revocation of her release.

3 79. Moreover, the “fiscal and administrative burdens” that release from custody
4 unless and until a pre-deprivation bond hearing is provided would impose are
5 nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. N.Y.V.D. does not seek
6 a unique or expensive form of process, but rather her release from custody until a
7 routine hearing regarding whether her ORR should be revoked and whether she
8 should be re-incarcerated takes place.

9 80. Release from custody until ICE (1) moves for a parole re-determination before
10 a neutral adjudicator and (2) demonstrates by clear and convincing evidence that
11 N.Y.V.D. is a flight risk or danger to the community is far *less* costly and
12 burdensome for the government than keeping her detained. As the Ninth Circuit
13 noted in 2017, which remains true today, “[t]he costs to the public of immigration
14 detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
15 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

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

19 81. Releasing N.Y.V.D. from custody until she is provided a pre-deprivation
20 hearing would decrease the risk of her being erroneously deprived of her liberty.
21 Before she can be lawfully detained, she must be provided with a hearing before a
22 neutral adjudicator, at which the government is held to show that there are
23 sufficiently changed material circumstances such that the November 2022 parole,
24 release, and placement into ORR should be altered or revoked because clear and
25 convincing evidence exists to establish that N.Y.V.D. is now a danger to the
26 community or a flight risk.

27 82. Under the process that ICE maintains is lawful—which affords N.Y.V.D. no
28 process whatsoever—ICE can simply re-detain her at any point if the agency desires

1 to do so, as ICE did on November 24, 2025. N.Y.V.D. has already been erroneously
2 deprived of her liberty when she was detained at her check-in, and the risk she will
3 continue to be deprived is high if ICE is permitted to keep her detained after making
4 a unilateral decision to re-detain her.

5 83.By contrast, the procedure N.Y.V.D. seeks—release from custody and no
6 further re-detention until she is provided a hearing in front of a neutral adjudicator
7 at which the government proves by clear and convincing evidence that
8 circumstances have changed to justify her detention. This procedure is much more
9 likely to produce accurate determinations regarding factual disputes, such as whether
10 a certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v.*
11 *Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending
12 on credibility of witnesses and assessment of conditions not subject to measurement”
13 are at issue, the “risk of error is considerable when just determinations are made after
14 hearing only one side”). “A neutral judge is one of the most basic due process
15 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
16 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth
17 Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews*
18 can be decreased where a neutral decisionmaker, rather than ICE alone, makes
19 custody determinations. *Diouf v. Napolitano* (“*Diouf IP*”), 634 F.3d 1081, 1091–92
20 (9th Cir. 2011).

21 84.Due process also requires consideration of alternatives to detention at any
22 custody redetermination hearing that may occur. The primary purpose of
23 immigration detention is to ensure a noncitizen’s appearance during removal
24 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this
25 purpose if, as here, there are alternatives to detention that could mitigate risk of
26 flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
27 detention must be considered in determining whether N.Y.V.D.’s incarceration is
28 warranted.

FIRST CAUSE OF ACTION

Unlawful Re-Detention – Arbitrary and Capricious Agency Action

85. Petitioner N.Y.V.D. re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

86. Petitioner was previously released by Respondents because ICE necessarily determined that she did not pose a danger or flight risk. Respondents have authority to revoke release *only if* circumstances have changed. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

87. Respondents' actions are arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest. *Young*, 520 U.S. at 150; *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal. 2018). Just like people on pre-parole, parole, probation status, bail, or bond have a liberty interest, so too does Petitioner have a liberty interest in remaining out of custody on her Forms I-220A ORR. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019); *J.L.R.P.*, 2025 WL 3190589, at *10 (habeas granted enjoining and restraining the government from re-detaining the petitioner "unless there are material changed circumstances and a neutral decisionmaker determines that there is a significant likelihood of petitioner's removal in the reasonably foreseeable future...."); *Garcia-Ayala*, 2025 WL 2597508, at *5 (TRO prohibiting the government from re-detaining the petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker); *Diaz*, 2025 WL 1676854 (TRO prohibiting the government from re-detaining the petitioner without notice and a hearing before a neutral adjudicator).

88. N.Y.V.D. should therefore be immediately released and remain at liberty until DHS proves to a neutral adjudicator, by clear and convincing evidence, and taking into consideration alternatives to detention, that she is a danger to the community or a flight risk, such that her re-detention is warranted. During any custody

1 redetermination hearing that occurs, the neutral adjudicator must consider
2 alternatives to detention when determination whether Petitioner's re-incarceration is
3 warranted.

4 **SECOND CAUSE OF ACTION**

5 **Violation of Procedures for Revocation of Release**

6 89. Petitioner N.Y.V.D. re-alleges and incorporates herein by reference, as if set
7 forth fully herein, the allegations in all the preceding paragraphs.

8 90. The Due Process Clause of the Fifth Amendment forbids the government from
9 depriving any "person" of liberty "without due process of law." U.S. Const. amend.
10 V.

11 91. Petitioner had a vested liberty interest in her release. Due Process does not
12 permit the government to strip her of that liberty without a hearing before a neutral
13 adjudicator. *See Morrissey*, 408 U.S. at 487-488.

14 92. For these reasons, Petitioner's arrest and revocation of release without a
15 hearing violated the Constitution. The only remedy of this violation is her immediate
16 release from immigration detention unless and until DHS proves to a neutral
17 adjudicator, by clear and convincing evidence, and taking into consideration
18 alternatives to detention, that she is a danger to the community or a flight risk, such
19 that her re-detention is warranted. During any custody redetermination hearing that
20 occurs, the neutral adjudicator must consider alternatives to detention when
21 determination whether Petitioner's re-incarceration is warranted.

22 **THIRD CAUSE OF ACTION**

23 **Procedural Due Process – Right to a Pre-Deprivation Hearing**

24 **U.S. Const. amend. V**

25 93. Petitioner N.Y.V.D. re-alleges and incorporates herein by reference, as if set
26 forth fully herein, the allegations in all the preceding paragraphs.

1 94. The Due Process Clause of the Fifth Amendment forbids the government from
2 depriving any “person” of liberty “without due process of law.” U.S. Const. amend.
3 V.

4 95. Other than as punishment for a crime, due process permits the government to
5 take away liberty only “in certain special and narrow nonpunitive circumstances ...
6 where a special justification ... outweighs the individual’s constitutionally protected
7 interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. Such special
8 justification exists only where a restraint on liberty bears a “reasonable relation” to
9 permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha*
10 *v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are
11 “ensuring the appearance of aliens at future immigration proceedings and preventing
12 danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

13 96. Those substantive limitations on detention are closely intertwined with
14 procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a
15 right to adequate procedures to determine whether their detention in fact serves the
16 purposes of ensuring their appearance or protecting the community. *Id.* at 79;
17 *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942,
18 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the
19 habeas court may assess whether the noncitizen’s immigration detention is
20 reasonably related to the purposes of ensuring her appearance or protecting the
21 community, *Zadvydas*, 533 U.S. at 699, or require release. Under this framework,
22 Petitioner’s release is required because her re-detention violates her due process
23 rights.

24 97. Further, Petitioner had a vested liberty interest in her release. Due Process
25 does not permit the government to strip her of that liberty without a future hearing
26 prior to any re-detention. *See Morrissey*, 408 U.S. at 487-488.

1 98. Moreover, because Petitioner faces detention without any meaningful
2 determination of whether circumstances have changed such that she poses a danger
3 or flight risk, her detention violates due process.

4 99. Further, because she was not provided with a hearing prior to her re-detention,
5 and her continuing unlawful and constitutionally indefinite detention without
6 adequate process is an ongoing violation of her due process rights, the only remedy
7 of this violation is Petitioner's immediate release from immigration detention, as
8 well as a future hearing before a neutral adjudicator prior to any re-detention. At the
9 hearing, the neutral adjudicator would evaluate, *inter alia*, whether circumstances
10 have changed such that she now poses a danger or a flight risk. During any custody
11 redetermination hearing that occurs, the neutral adjudicator must consider
12 alternatives to detention when determining whether Petitioner's re-incarceration is
13 warranted.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Petitioner prays that this Court grant the following relief:

- 16 (1) Assume jurisdiction over this matter;
17 (2) Enjoin Respondents from transferring Petitioner outside the
18 jurisdiction of the Central District of California pending the
19 resolution of this case;
20 (3) Enjoin Respondents from continuing to detain Petitioner and order
21 the immediate release of Petitioner from DHS custody on the
22 conditions of her prior release;
23 (4) Order that, prior to any future re-detention, Petitioner is provided a
24 hearing before a neutral adjudicator at which DHS must prove by
25 clear and convincing evidence that she is a danger or a flight risk;
26 (5) Order the immediate release of Petitioner from custody on any
27 other basis that this Court finds proper;
28 (6) Declare that N.Y.V.D.'s detention by ICE violates the Due Process

1 Clause of the Fifth Amendment;

2 (7) Award reasonable costs and attorney fees; and

3 (8) Grant such further relief as the Court deems just and proper.

4
5 Dated: December 16, 2025

Respectfully submitted,

6 s/ Zachary Nightingale

7 Zachary Nightingale
8 Attorneys for Petitioner
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of her attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Executed on this December 16, 2025, in San Francisco, California.

s/ Zachary Nightingale

Zachary Nightingale
Attorney for Petitioner