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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

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

Respondents-Defendants.

Case No.

**EX PARTE MOTION FOR
TEMPORARY
RESTRAINING ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF EX PARTE
MOTION FOR
TEMPORARY
RESTRAINING ORDER
AND MOTION FOR
PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and
Injunctive Relief

Motion for TRO; Points and Authorities in Support of Case No.
Petitioner's Motion for Ex Parte TRO/PI

NOTICE OF EX PARTE APPLICATION

In compliance with Local Rule of Civil Procedure 7-19, Petitioner-Plaintiff N.Y.V.D. states that Respondents-Defendants are represented by Mr. Beck and Mr. Harris. Their contact information is:

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A memorandum of points and authorities, along with a proposed order, are submitted in support of this *ex parte* motion for a temporary restraining order, which is filed because Petitioner-Plaintiff N.Y.V.D. is currently detained at Adelanto ICE Processing Center in Adelanto, California and is at risk of being subject to transfer to another judicial district and deported from the United States without due process.

Further, undersigned Counsel states that, on December 15 in the morning, he emailed Mr. Harris and Mr. Beck, stating the reasons for the petition and motion and the urgency of the matter, and asked whether Mr. Beck would be available to further discuss the case and motion. On December 15, in the afternoon and evening, Mr. Beck and undersigned Counsel corresponded further about the matter, but to date have been unable to find a time to meet and further discuss.

Dated: December 16, 2025

Respectfully Submitted

/s/ Zachary Nightingale
Zachary Nightingale
Attorney for N.Y.V.D.

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 6-1 of the Local rules of this Court, Petitioner hereby moves this Court for an order that Respondents Department of Homeland Security (“DHS”), United States Immigration and Customs Enforcement (“ICE”), Pam Bondi, in her official capacity as the U.S. Attorney General, and Fereti Semaia, in their official capacity as Facility Administrator at Adelanto ICE Processing Center, be enjoined from continuing to detain Petitioner-Plaintiff N.Y.V.D. in custody, and, following her release, be enjoined from re-detaining her without first providing her with a hearing before a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the concurrently filed Declaration of Zachary Nightingale with accompanying exhibits in support of the Petition for Writ of Habeas Corpus and Ex Parte Motion for Temporary Restraining Order (TRO). As set forth in the Points and Authorities, Petitioner raises that she warrants a TRO due to her weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying her unlawful re-detention, where that detention was arbitrarily imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant her request for a TRO requiring ICE to immediately release her from custody (to enjoin the unlawful ongoing detention), and enjoin Respondents from re-detaining her before providing her with a hearing before a neutral adjudicator prior to any re-detention. The only mechanism to ensure that she is not continuously unlawfully detained in violation of her due process rights is an ex parte TRO from this Court.

Dated: December 16, 2025

Respectfully Submitted

/s/ Zachary Nightingale

Zachary Nightingale

Attorney for Petitioner-Plaintiff

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1 **I. INTRODUCTION**

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

10 Therefore, N.Y.V.D., by and through undersigned counsel, hereby files this
11 motion for a temporary restraining order and preliminary injunction to enjoin the
12 U.S. Department of Homeland Security's ("DHS") Immigration and Customs
13 Enforcement ("ICE") from continuing to unlawfully detain her in their civil
14 immigration custody and immediately release her because ICE deprived her of her
15 liberty without due process of the law in detaining her. N.Y.V.D. also seeks an order
16 enjoining Respondents from re-detaining her unless and until she is afforded notice
17 and a hearing before a neutral adjudicator prior to any future re-detention where
18 DHS bears the burden of demonstrating that her re-detention would be justified (i.e.,
19 whether she poses a danger or a flight risk), and where the neutral adjudicator must
20 further consider whether, in lieu of detention, alternatives to detention exist to
21 mitigate any risk that DHS may establish.

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

24 On or about November 19, 2022, N.Y.V.D. entered the United States without
25 inspection and then presented herself to U.S. immigration authorities to be
26 processed. Hours later, DHS released her from its custody by paroling her into the
27 United States under Immigration and Nationality Act (INA) § 212(d)(5)—which
28 necessarily required a determination that N.Y.V.D. was neither a flight risk nor a

1 danger to the community. *See* Declaration of Zachary Nightingale (“ZN Decl.”), at
2 Exhibit A.

3 As a condition of her parole, N.Y.V.D. reported to the San Francisco ICE
4 Field Office. *See* ZN Decl., at Exh. B. On information and belief, ICE issued
5 N.Y.V.D. a Form I-220, Order of Release on Recognizance (ORR), in accordance
6 with INA § 236, 8 U.S.C. § 1226, and N.Y.V.D. has attended every scheduled ICE
7 check-in.

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

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

24 For over three years since being paroled into the United States, and for over
25 two years since being granted work authorization, N.Y.V.D. has complied with her
26 check-ins, worked hard to support herself, connected with friends and family in the
27 United States, and fostered a community within 

1 [REDACTED] She was lawfully employed by [REDACTED]
2 [REDACTED]

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

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

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

18 On November 26, 2025, two days after N.Y.V.D. was unlawfully arrested,
19 USCIS uploaded a Notice of Dismissal into N.Y.V.D.'s online USCIS account,
20 informing her that because DHS records indicated that she was subject to expedited
21 removal, her asylum application was dismissed. *See* ZN Decl., at Exh. D. The
22 dismissal also stated that if she was afraid of her life—which to be clear, USCIS and
23 DHS already knew, as they knew that she had an application for asylum pending—
24 then she must affirmatively request a Credible Fear Interview (“CFI”) from inside
25

26 ¹ *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 detention. *Id.* Undersigned Counsel and N.Y.V.D. learned about this dismissal on
2 December 4, and promptly requested her CFI.

3 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 

6 
7 
8 On December 12, 2025, USCIS issued a negative CFI determination. =

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

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

26 By statute and regulation, as interpreted by the Board of Immigration Appeals
27 (BIA), ICE has the authority to revoke a non-citizen's conditional parole and arrest
28 them, but only where there has been a change in circumstances since the individual's

1 release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *see Panosyan v. Mayorkas*, 854
2 F. App'x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances . . . ICE
3 cannot redetain Panosyan.”); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).
4 The government has further clarified in litigation that any change in circumstances
5 must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017),
6 *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
7 added). That authority, however, is proscribed by the Due Process Clause because it
8 is well-established that individuals released from incarceration have a liberty interest
9 in their freedom. In turn, to protect that interest, on the particular facts of N.Y.V.D.’s
10 case, due process required notice and a hearing, prior to any revocation of her
11 release, at which she was afforded the opportunity to advance her arguments as to
12 why she should not be detained.

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

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

24 N.Y.V.D. meets the standard for a TRO. She will continue to suffer immediate
25 and irreparable harm stemming from her unlawful detention absent an order from
26 this Court enjoining Respondents from further unlawful detention by ordering her
27 immediate release from detention, and enjoining future re-detention unless and until
28 she receives a hearing before a neutral adjudicator. Since holding federal agencies

1 accountable to constitutional demands is in the public interest, the balance of equities
2 and public interest are also strongly in N.Y.V.D.'s favor.

3 **II. STATEMENT OF FACTS AND CASE**

4 N.Y.V.D. was born in Nicaragua in 1988. She fled Nicaragua in 2022 to avoid
5 future persecution and torture at [REDACTED]
6 [REDACTED]

7 On or about November 19, 2022, N.Y.V.D. entered the United States without
8 inspection and soon thereafter presented herself to U.S. immigration authorities.
9 Hours later, DHS paroled her from its custody and into the United States under INA
10 § 212(d)(5). *See* ZN Decl., at Exh. A. As a condition of her parole, ICE ordered her
11 to report to the ICE office nearest to her place of residence. *Id.* at Exh. B. N.Y.V.D.
12 reported to the San Francisco ICE Office.

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

16 On information and belief, DHS never filed N.Y.V.D.'s NTA with the
17 Immigration Court in her case, and thus N.Y.V.D.'s removal proceedings were not
18 initiated. Her A-number is not registered with EOIR and she has not been scheduled
19 for an immigration court hearing.

20 In 2023, N.Y.V.D. affirmatively filed Form I-589, Application for Asylum,
21 with USCIS. USCIS accepted the application. Thereafter, she applied for and
22 received work authorization pursuant to her pending application for asylum. *See* ZN
23 Decl., at Exh. C.

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

1 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.²

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

28 ² *See supra* n.1

On December 12, 2025, USCIS issued a negative CFI determination.

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

Since being detained, N.Y.V.D. has diligently sought legal representation to challenge her detention.

III. LEGAL STANDARD

Petitioner is entitled to a TRO if she establishes she is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (PI and TRO standards are “substantially identical”). Even if N.Y.V.D. does not show a likelihood of success on the merits, the Court may still grant a TRO if she raises “serious questions” as to the merits of her claims, the balance of hardships tip “sharply” in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, N.Y.V.D. overwhelmingly satisfies both standards.

IV. ARGUMENT

A. PETITIONER WARRANTS A TRO

A TRO should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” absent an order and last until a PI hearing is held. Fed. R. Civ. P. 65(b); see *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

1 Here, N.Y.V.D. has suffered an immediate and irreparable injury and loss
2 through her unlawful, continuous, and indefinite detention, which violates her due
3 process rights, and so too did her re-detention prior to receiving a hearing before a
4 neutral adjudicator. The irreparable injury will continue each day she remains
5 detained without due process. She reached out to trusted loved ones, including her
6 U.S. citizen boyfriend and her union leaders, to help her locate counsel, and then
7 diligently retained counsel to challenge what she sees as her unlawful detention.

8 The Court should order N.Y.V.D.'s immediate release and enjoin future
9 detention because she is likely to succeed on the merits of her claims.

10 **1. N.Y.V.D. is Likely to Succeed on the Merits of Her Claim That**
11 **Her Re-Detention is Unconstitutional, as Due Process Requires**
12 **that She be Afforded a Hearing Before a Neutral Adjudicator**
13 **Prior to Any Re-Detention, and she is Entitled to Such a Hearing**
14 **Prior to Any Future Re-Detention.**

15 N.Y.V.D. is likely to succeed on her claim that, in her particular
16 circumstances, fundamental principles of due process required that her release could
17 not be revoked, and therefore she could not be detained by ICE, without first being
18 provided a pre-deprivation hearing before a neutral adjudicator where Respondents
19 show that circumstances have changed such that she is now a danger or a flight risk.

20 Civil detention in United States law is the exception, not the rule, and even
21 where permitted by law or regulation, must comport with fundamental constitutional
22 limitations. By statute and regulation, ICE has the ability to unilaterally revoke any
23 noncitizen's conditional parole and arrest the noncitizen at any time. 8 U.S.C. §
24 1226(b), 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory
25 language granting ICE the power to revoke an immigration bond "at any time," 8
26 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the BIA recognized an
27 implicit limitation on ICE's authority to re-arrest noncitizens absent a change of
28 circumstance. *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*,
ICE has no authority to re-detain an individual absent a "material" change in

1 circumstances. *Panosyan*, 854 F. App'x at 788 (“[A]bsent changed circumstances
2 ... ICE cannot redetain Panosyan.”); *Saravia*, 280 F. Supp. 3d at 1197.

3 Respondents’ authority to make the unilateral decision to arrest a noncitizen
4 previously released is proscribed by the Due Process Clause because “it is well
5 established that the Fifth Amendment entitles aliens to due process of law in
6 deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). It is equally
7 undisputed that “[f]reedom from imprisonment—from government custody,
8 detention, or other forms of physical restraint—lies at the heart of the liberty that
9 [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
10 Noncitizens on pre-parole, parole, or probation status have a protected liberty
11 interest in remaining out of custody. *See Rosado v. Figueroa*, No. CV 25-02157
12 PHX DLR (CDB), 2025 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025) (citations
13 omitted). When the government grants a noncitizen parole into the country, it creates
14 a liberty interest intimately tied to freedom from imprisonment. *Palma v. LaRose*,
15 No.: 25-cv-1942-BJC-MMP, U.S. Dist. LEXIS 213718 (S.D. Cal. Aug. 11, 2025)
16 (“continued freedom after release on own recognizance” was a core liberty interest).

17 Moreover, federal courts throughout the country have held that individuals
18 who have been present in the United States for more than two years, released on
19 their own recognizance, obtained permission to work, and have built a life outside
20 of detention, have a substantial private interest in being out of custody and their
21 detention violates that interest. *See C.A.R.V. v. Wofford*, No. 25-cv-01395-JLT-
22 SKO, 2025 WL 3059549, at *10 (E.D. Cal. Nov. 1, 2025) (PI granted as the
23 petitioner established he had due process rights and his detention was “not
24 ‘mandatory’ . . . where [he] has been present in the United States for approximately
25 four years and was released on his own recognizance well before Respondents
26 adopted the new interpretation of the [1225(b)] governing statutes.”); *Ortiz Donis v.*
27 *Chestnut*, No. 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at *7 (E.D. Cal. Oct.
28 9, 2025) (same) (citing cases); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D.

1 Cal. 2025) (granting PI for the petitioner who was apprehended at the border,
2 released from custody under supervised conditions for more than two years, and was
3 arrested after the government attempted to “place her in expedited removal
4 proceedings, despite serious questions as to the lawfulness of such a decision...”).

5 To protect that interest, federal district courts in California and beyond have
6 repeatedly recognized that the demands of due process and the limitations on DHS’s
7 authority to revoke a noncitizen’s release set out in DHS’s stated practice and *Matter*
8 *of Sugay* both require a pre-deprivation hearing for a noncitizen on bond or parole,
9 before ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal.
10 June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
11 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23,
12 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2
13 (N.D. Cal. Mar. 1, 2021); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC,
14 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a
15 hearing before any re-arrest); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
16 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm
17 if re-detained, and due process required a hearing prior to any re-detention);
18 *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal.
19 May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff’s
20 ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*,
21 No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

22 Applying these principles, it is clear that N.Y.V.D. has a protected liberty
23 interest in remaining out of custody, and that her revocation of her parole and ORR
24 required notice, hearing, and the opportunity to be heard *prior* to any revocation.
25 During the more than three years since N.Y.V.D. entered the United States and was
26 initially apprehended and released by ICE, N.Y.V.D. began to build her life—she
27 filed her application for asylum, obtained work authorization and worked lawfully,
28 entered into a romantic relationship with her U.S. citizen boyfriend, whom she plans

1 to marry, connected with family, and even fostered relationships with co-workers
2 and [REDACTED] These extensive relations of
3 support and interdependence underscore the high stakes of her liberty.

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

9 Further, any re-arrest required that DHS establish a “material” change in
10 circumstances to legally justify N.Y.V.D.’s detention, which DHS failed to do.
11 *Matter of Sugay*, 17 I&N Dec. at 640; *Panosyan*, 854 F. App’x at 788; *Saravia*, 280
12 F. Supp. 3d at 1197. A legal justification would be to prevent danger or flight risk.
13 *See Zadvydas*, 533 U.S. at 699 (purpose of detention is “assuring the alien’s presence
14 at the moment of removal”); *Id.* at 690–91 (discussing twin justifications of
15 detention as preventing flight and protecting the community). N.Y.V.D. does not
16 pose a danger or flight risk that warrants detention, and thus her detention is not
17 reasonably related to prevent danger or flight risk. This is especially so because the
18 ICE *already* released N.Y.V.D. after a few hours of detention in 2022, which
19 necessarily required a determination then that she was neither a flight risk nor a
20 danger to the community, and nothing suggests that has changed. *Sun v. Santacruz*,
21 No. 5:25-cv-02198-JLS-JC, 2025 WL 2730235, at *6 (C.D. Cal. Aug. 26, 2025)
22 (neither risk was present where ICE first released the petitioner upon finding, at least
23 implicitly, that the petitioner was neither a flight risk nor a danger to the community,
24 and absent new facts to indicate risk of flight or to the community); *Singh v.*
25 *Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. Cal.
26 July 11, 2025) (similar conclusion where the petitioner “attended every check-in and
27 court hearing since he arrived in the United States”); *Diaz v. Kaiser*, No. 3:25-cv-
28 05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (similar).

1 Further, since her release on her own recognizance, N.Y.V.D. has continued
2 to demonstrate that she poses neither a flight risk nor a danger to the community.
3 *Pinchi*, 792 F. Supp. 3d at 1036. She has diligently attended every check-in with
4 ICE, *id.*, diligently filed her asylum application, and is working under work
5 authorization pursuant to her pending asylum application. N.Y.V.D. has no criminal
6 record and has become a deeply valued member of her community, is currently in a
7 committed long-term relationship with her U.S. citizen boyfriend, whom she has
8 plans to marry, has made friends and developed a close relationships with coworkers
9 at [REDACTED]
10 view her as a valuable member. Each of these factors point to a lack of flight risk.
11 *See M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (cleaned
12 up) (“Any potential government concern that delay in scheduling a hearing could
13 exacerbate flight risk or danger is unsubstantiated in light of [the petitioner’s] strong
14 family ties and his continued employment . . . as well as his actions in posting a bond
15 and complying with the conditions of release.”). Respondents do not claim that any
16 material circumstances have changed that would warrant reassessment of
17 N.Y.V.D.’s risk of flight or dangerousness, and it has articulated no other reason for
18 her detention. If Respondents wished to detain her, it need only have filed her NTA,
19 began her proceedings, and provide a hearing before a neutral decisionmaker.

20 Thus, ICE revoked N.Y.V.D.’s ORR without a showing in changed
21 circumstances related to her case. The only circumstance that ICE purported was
22 N.Y.V.D.’s warrant, which presumably existed since 2022 when she was first
23 apprehended, and that the new administration’s directives were to expedite her
24 removal proceedings. Therefore, Respondents violated her due process when it
25 decided to arbitrarily revoke her release and arrest her in November 2025 without
26 first providing her with a pre-deprivation hearing before a neutral adjudicator to
27 determine whether circumstances had materially changed since November 2022.
28

1 In sum, it is well-established that individuals released from incarceration have
2 a liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d
3 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—
4 even if that freedom is lawfully revocable—has a liberty interest that entitles him to
5 constitutional due process before he is re-incarcerated”). Here, to protect that
6 interest, due process required notice and a hearing prior to N.Y.V.D.’s detention.

7 Courts analyze these procedural due process claims in two steps: (1) whether
8 there exists a protected liberty interest, and (2) the procedures necessary to ensure
9 any deprivation of that protected liberty interest accords with the Constitution. *See*
10 *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

11 **a. N.Y.V.D. Has a Protected Liberty In Her Release.**

12 N.Y.V.D.’s liberty from civil immigration custody is protected by the Due
13 Process Clause: “Freedom from imprisonment—from government custody,
14 detention, or other forms of physical restraint—lies at the heart of the liberty that
15 [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

16 For over three years, since 2022, N.Y.V.D. has exercised that freedom
17 pursuant to her ORR. She thus retains a weighty liberty interest under the Due
18 Process Clause of the Fifth Amendment in avoiding re-incarceration, which is not
19 diminished by the supervised nature of her release. *Zadvydas*, 533 U.S. at 679 (“[A]
20 noncitizen’s liberty interest is not diminished by their lack of a legal right to live at
21 large, for the choice at issue here is between imprisonment and supervision
22 under release conditions that may not be violated and their liberty interest is strong
23 enough to raise a serious constitutional problem with indefinite detention.”); *see also*
24 *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpnelli*, 411 U.S. 778,
25 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972).

26 Just as importantly, N.Y.V.D. has continued presenting herself before ICE for
27 her regular check-in appointments for over three years, where ICE has not sought to
28

1 re-arrest her during this time. ICE instead gave her future dates and times to appear
2 again each year, with which N.Y.V.D. continued to comply.

3 Individuals—including noncitizens—released from incarceration have a
4 liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty
5 interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994)
6 (noting that “[i]t is well-established that the due process clause applies to
7 protect immigrants”). This is further reinforced by *Morrissey*, in which the Supreme
8 Court recognized the protected liberty rights under the Due Process Clause of a
9 criminal detainee who was released on parole from incarceration. 408 U.S. at 481–
10 82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be
11 gainfully employed and is free to be with family and friends and to form the other
12 enduring attachments of normal life”—thus, those released on parole have a
13 protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482.
14 *See also Young*, 520 U.S. at 152 (individuals placed in a pre-parole program created
15 to reduce prison overcrowding have a protected liberty interest requiring pre-
16 deprivation process); *Gagnon*, 411 U.S. at 781–82 (individuals released on felony
17 probation have a protected liberty interest requiring pre-deprivation process).

18 In fact, so fundamental to due process is the concept of liberty that it is even
19 well-established that an individual maintains a protectable liberty interest where the
20 individual obtains liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes*
21 *v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868,
22 873 (9th Cir. 1982) (due process considerations support the notion that an inmate
23 released on parole by mistake and serving a sentence that did not carry a possibility
24 of parole, could not be re-incarcerated because the mistaken release was not his fault,
25 and he had appropriately adjusted to society, so it “would be inconsistent with
26 fundamental principles of liberty and justice” to return him to prison) (cleaned up).

27 Here, when this Court “compar[es] the specific conditional release in
28 [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,”

1 it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887.
2 Just as in *Morrissey*, N.Y.V.D.’s release “enables h[er] to do a wide range of things
3 open to persons” who have never been in custody, including to live at home, work
4 with her community, and “be with family and friends and to form the other enduring
5 attachments of normal life.” *Morrissey*, 408 U.S. at 482. ***Moreover, N.Y.V.D. is not***
6 ***a criminal but a civil detainee, and thus the due process considerations of her***
7 ***liberty are even weightier than the courts have found apply in the criminal context.***

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

13  The Supreme Court and the Ninth Circuit make
14 clear that she has a strong liberty interest in her continued release from detention.

15 **b. N.Y.V.D.’s Liberty Interest Mandated a Due Process**
16 **Hearing Before any Re-Detention, and Once Released,**
17 **Mandates Such a Hearing Prior to Any Re-Detention**

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

27 “Adequate, or due, process depends upon the nature of the interest affected.
28 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 in order 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.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide N.Y.V.D. with notice and a hearing *prior* to any re-incarceration and revocation of her ORR. *See Morrissey*, 408 U.S. at 481–82; *Haygood*, 769 F.2d at 1355-56; *Zinerman*, 494 U.S. at 136-37; *see also Youngberg v. Romeo*, 457 U.S. 307, 321–24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (individuals

1 awaiting involuntary civil commitment proceedings may not constitutionally be held
2 in jail pending the determination as to whether they can ultimately be recommitted).
3 Under *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty,”
4 *Haywood*, 769 F.2d at 1357, and required a pre-deprivation hearing before a neutral
5 adjudicator, which ICE failed to provide.

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

9 **i. N.Y.V.D.’s Interest in Her Liberty is Profound**

10 Under *Morrissey* and its progeny, individuals conditionally released
11 from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*,
12 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a
13 person who is in fact free of physical confinement, even if that freedom is lawfully
14 revocable, has a liberty interest that entitles her to constitutional due process before
15 she is re-incarcerated—apply with even greater force to individuals like N.Y.V.D.,
16 who have been released pending civil removal proceedings, rather than parolees or
17 probationers who are subject to incarceration as part of a sentence for a criminal
18 conviction. Parolees and probationers have a diminished liberty interest given their
19 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin*
20 *v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee
21 context, the courts have held that the parolee cannot be re-arrested without a due
22 process hearing in which they can raise any claims they may have regarding why
23 their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-
24 92; *Hurd*, 864 F.3d at 683. This extends to noncitizens released from immigration
25 detention on parole or probation. *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032
26 (N.D. Cal. 2025); *Diaz*, 2025 WL 1676854, at *2. “This most basic American
27 principle—that individuals placed at liberty are entitled to process before the
28 government reimprisons them—has particular meaning,” especially where ICE

1 already found her detention to be unnecessary. *See Rosado*, 2025 WL 2337099, at
2 *12-13. Thus, N.Y.V.D. retains a truly weighty liberty interest prior to her re-arrest.

3 What is at stake in this case for N.Y.V.D. is one of the most profound
4 individual interests recognized by our legal system: whether ICE may unilaterally
5 nullify a prior release decision and be able to take away her physical freedom, i.e.,
6 her “constitutionally protected interest in avoiding physical restraint.” *Singh v.*
7 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom
8 from bodily restraint has always been at the core of the liberty protected by the Due
9 Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*,
10 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
11 detention, or other forms of physical restraint—lies at the heart of the liberty that
12 [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

16 **ii. Respondent’s Interest in Keeping N.Y.V.D. in Detention**
17 **is Low and Respondents’ Burden to Release Her is**
18 **Minimal**

19 Respondent’s interest in keeping N.Y.V.D. in detention without a due process
20 hearing is low, and when weighed against her significant private interest in her
21 liberty, the scale tips sharply in favor of releasing N.Y.V.D. from custody unless and
22 until Respondents demonstrate by clear and convincing evidence that she is a flight
23 risk or danger to the community. It becomes abundantly clear that the *Mathews* test
24 favors N.Y.V.D. when the Court considers that the process she seeks—release from
25 custody pending notice and a hearing regarding whether her release should be
26 revoked and she should be arrested, especially where ICE *already* paroled and
27 released her over *three years ago* and where nothing in the interim has changed to
28 warrant re-detention—is a standard course of action for Respondents. In the
alternative, providing N.Y.V.D. with a hearing before a neutral decisionmaker to

1 determine whether there is clear and convincing evidence that she is a flight risk or
2 danger to the community would impose only a *de minimis* burden on Respondents,
3 as Respondents routinely provide this sort of hearing to individuals like N.Y.V.D.

4 As immigration detention is civil, it can have no punitive purpose.
5 Respondents' only interest in holding an individual in immigration detention can be
6 to prevent danger to the community or to ensure a noncitizen's appearance at
7 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, Respondents
8 cannot plausibly assert that it had a sudden interest in detaining N.Y.V.D. due to
9 alleged dangerousness, or that she would not appear at her hearing—there was never
10 a hearing for her to attend, but she consistently appeared at her ICE check ins and
11 attended her biometrics appointment before USCIS, reflecting that N.Y.V.D. would
12 comply with any request the government makes for her appearance. The government
13 thus cannot establish that her circumstances have materially changed since her
14 parole and release from ICE custody in 2022—three years before her re-arrest.

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

19 In sum, N.Y.V.D.'s arrest constitutes a violation of due process because there
20 was no material change in circumstances that establishes she is a danger to the
21 community here in the United States where she has otherwise lived a law-abiding
22 life and has been awaiting the adjudication of her asylum case for almost three years.
23 Under the BIA and ICE's own stated policies, any revocation of parole and arrest
24 pursuant to § 1226(b) requires "a *material* change in circumstances." *Saravia*, 280
25 F. Supp. 3d at 1197. If DHS believed that there was a material change in
26 circumstances that would justify revoking N.Y.V.D.'s release, ICE would have
27 moved to detain her (subject to the demands of due process) at any point during her
28 several check-ins before the San Francisco ICE Office. DHS would have also moved

1 to file her NTA and begin her removal proceedings. DHS did neither. Their failure
2 to move to arrest or begin her removal proceedings between 2022 and 2025
3 illustrates the absurdity of any potential claim that there is a material change in
4 circumstances that allows the government to revoke N.Y.V.D.'s release and detain
5 her without affording her due process. At the very least, N.Y.V.D. had the right to a
6 hearing prior to her detention where she could present her argument as to why there
7 was no justification for the revocation of her release.

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

14 Release from custody until ICE (1) moves for a parole re-determination before
15 a neutral adjudicator and (2) demonstrates by clear and convincing evidence that
16 N.Y.V.D. is a flight risk or danger to the community is far *less* costly and
17 burdensome for the government than keeping her detained. As the Ninth Circuit
18 noted in 2017, which remains true today, "[t]he costs to the public of immigration
19 detention are 'staggering': \$158 each day per detainee, amounting to a total daily
20 cost of \$6.5 million." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

21 **iii. N.Y.V.D.'s Risk of Erroneous Deprivation is High**
22 **Without Release from Custody until Respondents Provide**
23 **a Due Process Hearing.**

24 Releasing N.Y.V.D. from custody until she is provided a pre-deprivation
25 hearing would decrease the risk of her being erroneously deprived of her liberty.
26 Before she can be lawfully detained, she must be provided with a hearing before a
27 neutral adjudicator where the government is held to show that there are sufficiently
28 changed material circumstances such that the November 2022 parole, release, and

1 placement into ORR should be altered or revoked because clear and convincing
2 evidence exists to establish that N.Y.V.D. is now a danger or a flight risk.

3 Under the process that ICE maintains is lawful—which affords N.Y.V.D. no
4 process whatsoever—ICE can simply re-detain her at any point if the agency desires
5 to do so, as ICE did on November 24, 2025. N.Y.V.D. has already been erroneously
6 deprived of her liberty when she was detained at her check-in, and the risk she will
7 continue to be deprived is high if ICE is permitted to keep her detained after making
8 a unilateral decision to re-detain her.

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

24 Due process also requires consideration of alternatives to detention at any
25 custody redetermination hearing that may occur. The primary purpose of
26 immigration detention is to ensure a noncitizen’s appearance during removal
27 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this
28 purpose if, as here, there are alternatives to detention that could mitigate risk of

1 flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
2 detention must be considered in determining whether her incarceration is warranted.

3 As the above-cited authorities show, N.Y.V.D. is likely to succeed on her
4 claim that the Due Process Clause requires notice and a hearing before a neutral
5 decisionmaker prior to any detention ICE. And, at the very minimum, she clearly
6 raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance*
7 *for the Wild Rockies*, 632 F.3d at 1135.

8 **2. N.Y.V.D. will Suffer Irreparable Harm Absent Injunctive**
9 **Relief.**

10 N.Y.V.D. will suffer irreparable harm were she to be deprived of his liberty
11 and subjected to continued detention by immigration authorities without being
12 immediately released and provided the constitutionally adequate process (a future
13 pre-deprivation hearing before a neutral adjudicator) that this motion for a
14 temporary restraining order seeks. Detainees in civil ICE custody are held in
15 “prison-like conditions” which have real consequences for their lives. *Preap v.*
16 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained,
17 “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It
18 often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker*
19 *v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat’l Ctr. for Immigrants Rights,*
20 *Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has
21 recognized in “concrete terms the irreparable harms imposed on anyone subject to
22 immigration detention” including “subpar medical and psychiatric care in ICE
23 detention facilities, the economic burdens imposed on detainees and their families
24 as a result of detention, and the collateral harms to children of detainees whose
25 parents are detained.” *Hernandez*, 872 F.3d at 995. Finally, Respondents have
26 documented alarmingly poor conditions in ICE detention centers. *See, e.g.,* DHS,
27 Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE
28 Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of

1 environmental health and safety standards; staffing shortages affecting the level of
2 care for suicide watch; detainees being segregated without time outside their cell;
3 and no documentation that they were provided health care or three meals a day).³

4 N.Y.V.G. fled Nicaragua fearing future persecution. Since her parole and
5 release from her brief custody in 2022, she has been focused on rebuilding her life
6 and leaving the trauma and fear she endured in Nicaragua behind, including by
7 entering into a committed and romantic relationship with her U.S. citizen boyfriend,
8 whom she plans to marry, connecting with family and friends, securing
9 employment, and [REDACTED] Each day she remains
10 detained is a day she is ripped away from the opportunity to be with her loved ones,
11 work, and heal from the past harms that she fled.

12 **3. The Balance of Equities and the Public Interest Favor Granting**
13 **the TRO.**

14 The balance of equities and the public interest favor granting the TRO. First,
15 the balance of hardships strongly favors N.Y.V.D. as her detention is
16 unconstitutional. The government cannot suffer harm from an injunction that
17 prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d
18 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in
19 any legally cognizable sense by being enjoined from constitutional violations.”).
20 Therefore, the government cannot allege harm arising from a temporary restraining
21 order or preliminary injunction ordering it to comply with the Constitution.

22 Further, any burden imposed by requiring the Respondents to release
23 N.Y.V.D. from custody (and provide notice and a hearing before a neutral
24 adjudicator prior to any future re-detention) is both *de minimis* and clearly
25 outweighed by the substantial harm she will suffer as long as she continues to be
26 detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s
27 interest lies on the side of affording fair procedures to all persons, even though the

28 ³ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed June 27, 2025).

1 expenditure of governmental funds is required.”).

2 Finally, a TRO is in the public interest. First and most importantly, “it would
3 not be equitable or in the public’s interest to allow [a party] . . . to violate the
4 requirements of federal law, especially when there are no adequate remedies
5 available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014)
6 (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a
7 temporary restraining order is not entered, the government would effectively be
8 granted permission to continue to detain N.Y.V.D., in violation of the requirements
9 of Due Process. “The public interest and the balance of the equities favor
10 ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*,
11 757 F.3d at 1069 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012));
12 *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
13 injunction that ensures that individuals are not deprived of their liberty and held in
14 immigration detention because of bonds established by a likely unconstitutional
15 process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally,
16 public interest concerns are implicated when a constitutional right has been violated,
17 because all citizens have a stake in upholding the Constitution.”).

18 Therefore, the public interest overwhelmingly favors entering a TRO and PI.

19 **V. CONCLUSION**

20 For all the above reasons, N.Y.V.D. warrants a TRO that Respondents release
21 her from custody, not re-detain her unless she is afforded notice and a hearing before
22 a neutral adjudicator on whether it is justified by evidence that she is a danger to the
23 community or a flight risk.

24
25 Dated: December 16, 2025

Respectfully submitted,

26 /s/ Zachary Nightingale
27 Zachary Nightingale
28 Attorney for Petitioner