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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 SANTACRUZ 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. 5:25-cv-03404-WLH-SP

**PETITIONER'S REPLY
TO RESPONDENTS'
RESPONSE TO ORDER
TO SHOW CAUSE
REGARDING ISSUANCE
OF PETITIONER'S
PRELIMINARY
INJUNCTION**

Petitioner's Reply to Respondents'
Response to Order to Show Cause for PI

Case No. 5:25-cv-03404-WLH-SP

1 **I. INTRODUCTION**

2 Petitioner N.Y.V.D. fears that without this Court's issuance of her preliminary
3 injunction ("PI") Respondents (1) will arbitrarily re-detain her for execution of her
4 expedited removal order, to which Respondents still erroneously contend that she is
5 subject contrary to this Court's Temporary Restraining Order ("TRO"), and (2) can
6 re-detain her at any moment given that she is in constructive custody by virtue of the
7 electronic ankle monitor placed on her by ICE following her release from custody
8 on December 24, 2025, pursuant to this Court's TRO grant. In granting the TRO,
9 this Court has already found that N.Y.V.D. is likely to succeed on the merits of her
10 claim that her re-detention violated her constitutional and regulatory rights. Dkt. 11.

11 In this Court's TRO grant, the Court also directed Respondents to show cause
12 why the Court should not issue a preliminary injunction, *id.*, and Respondents allege
13 that the case is moot merely because N.Y.V.D. was released from detention—which
14 to be clear, occurred only as a result of this Court's TRO grant. Dkt. 12. However,
15 such cessation in compliance with the order is insufficient until (1) her unlawful re-
16 detention is permanently enjoined, and (2) the unlawful imposition of an expedited
17 removal order is vacated. Thus, the Court should convert the TRO into a PI.

18 **II. STATEMENT OF ADDITIONAL RELEVANT FACTS AND**
19 **PROCEDURAL BACKGROUND**

20 N.Y.V.D. provides these additional facts to respond to Respondents'
21 erroneous assertions that she can be subject to expedited removal and that her PI is
22 moot.

23 On November 19, 2022, following her initial encounter with immigration
24 officials, ICE not only released N.Y.V.D. on parole, with supervisory conditions,
25 but also issued her Form G-56 ("call-in letter"), in which it (1) ordered her to appear
26 at ICE for enrollment in Alternatives to Detention ("ATD") program, (2) informed
27 her about her legal rights and procedures for filing Form I-589, Application for

1 Asylum, and (3) instructed her that failure to appear at ICE could result in her
2 detention or in additional supervisory conditions. *See Declaration* of Zachary
3 Nightingale (“ZN Decl.”), at Exhibit A. She was not informed she was being
4 subjected to expedited removal. The first time she was informed of any expedited
5 removal process was after her detention in November 2025. She expressed a fear of
6 removal to Nicaragua, and was given a credible fear interview (“CFI”).

7 Following the denial of her CFI by U.S. Citizenship and Immigration
8 Services’ (“USCIS”), on December 23, 2025, N.Y.V.D. appeared before an
9 Immigration Judge (“IJ”). The IJ reviewed and affirmed the USCIS finding that she
10 did not have a credible fear of removal to Nicaragua. Thus, the IJ ordered N.Y.V.D.
11 removed to Nicaragua pursuant to ICE’s expedited removal order. *See* ZN Decl., at
12 Exhibit B. Later that day, on December 23, 2025, this Court granted N.Y.V.D.’s
13 TRO. Dkt. 11.

14 On December 24, 2025, ICE released N.Y.V.D. from Adelanto ICE
15 Processing Center following this Court’s order. However, as part of her release, ICE
16 placed her on the Intensive Supervision Appearance Program (“ISAP”), subjecting
17 her to 24/7 electronic monitoring through an ankle monitor, in-person check-ins at
18 the San Francisco ICE Office every two months, and with the San Francisco ISAP
19 Office every month. *See* ZN Decl., at Exhibits B, C. ICE scheduled N.Y.V.D.’s first
20 San Francisco ICE check-in on December 29, 2025. In addition, ICE’s Order of
21 Supervision (“OSUP”) reflects that N.Y.V.D. was ordered (expeditedly) removed
22 on December 23, 2025. *See* ZN Decl., at Exhibit B.

23 On December 29, 2025, N.Y.V.D. appeared at the San Francisco ICE Office,
24 in compliance with ICE’s conditions. She was enrolled in both ICE and ISAP visits.
25 Her next ISAP appointment is on January 12, 2026, and her next ICE appointment
26 is on March 2, 2026. *See* ZN Decl., at Exhibits B, C. At the appointment, N.Y.V.D.
27 also explained to the officers that prior to her unlawful re-arrest, she was not subject

1 to the strict ISAP conditions, including the 24/7 ankle monitoring, and that her prior
2 Order of Release on Recognizance (“ORR”) subjected her to yearly, not monthly,
3 visits. However, ICE refused to remove her ankle monitor or ease the conditions.

4 **III. ARGUMENT**

5 **A. N.Y.V.D.’s Habeas and PI are Not Moot Because the Threat of Her**
6 **Arrest and Mandatory Detention Remain Until the Injunction is**
7 **Made Permanent.**

8 As an initial matter, the Court should reject Respondents’ assertion that
9 N.Y.V.D.’s habeas and PI are moot. *See Dkt. 12*, Respondents’ Response to Order
10 to Show Cause (“Response”) at 1-2. Other district courts have found that
11 immigration habeas petitions and PI’s are *not* rendered moot when the petitioner
12 was released, because the threat of arrest and detention remain until the injunction
13 is made permanent.

14 On December 1, 2025, another judge in this district court held that:

15 A habeas petition is not moot where preliminary relief is not made
16 permanent. *See Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality
17 opinion) (rejecting suggestion of mootness where “release had been
18 granted following a preliminary injunction,” observing that “[u]nless
19 that preliminary injunction was made permanent and was not disturbed
20 on appeal, these individuals faced the threat of re-arrest and mandatory
21 detention”). Toward their mootness argument, counsel for Respondents
22 noted at the hearing that Petitioner was not detained after she appeared
23 for her November 12 check-in. Of course not: Respondents were
24 subject to the temporary restraining order at that time. Respondents
25 offer no indicia that Petitioner would not be subject to detention without
26 a hearing while her petition is pending in this Court but for preliminary
27 injunctive relief. The case has not been mooted by Petitioner’s release.

28 *Cruz v. Lyons*, No. 5:25-CV-02879-MCS-MBK, 2025 WL 3443146, at *2 (C.D.
Cal. Dec. 1, 2025).

Another district court similarly considered the case of a petitioner with a final

1 order who was released on a habeas petition and then re-arrested by ICE at a
2 subsequent check-in, after his prior habeas petition had been dismissed as moot. *See*
3 *Viengkhone S. v. Albarran*, No. 1:25-cv-01505-KES-HBK (HC), 2025 WL
4 3521302 (E.D. Cal. Dec. 8, 2025). The court granted a second preliminary
5 injunction, *id.* at *10, stating: “‘A habeas petition challenging’ incarceration or
6 detention ‘is never moot simply because, subsequent to its filing, the petitioner has
7 been released from custody.’” *Id.* at 5 (citing *Abdala v. I.N.S.*, 488 F.3d 1061, 1064
8 (9th Cir. 2007)). The *Viengkhone S.* district court found that:

9
10 Petitioner’s claim that ICE unlawfully revoked his order of supervision
11 in violation of 8 C.F.R. § 241.13(j) is moot because petitioner has since
12 been released from custody. ... However, petitioner’s other two claims,
13 that the Due Process Clause requires that he be provided a hearing prior
14 to any re-detention and that the Due Process Clause requires that he be
15 provided constitutionally adequate procedures ... are not moot.”

14 *Id.* at 8.

15 Likewise, another district court recently found that:

16
17 [I]ts prior order did not provide all the relief requested by Ms. Pablo
18 Sequen. Her original complaint sought, among other things, a
19 declaration that her detention without prior notice and a hearing
20 violated the Fifth Amendment and a permanent injunction prohibiting
21 her re-detention without such process. The Court’s order declared only
22 that Ms. Pablo Sequen’s detention without a prior hearing *likely*
23 violated the Fifth Amendment and enjoined the government from re-
24 retaining her only “during the pendency of these proceedings.” ... The
25 Court thus did not fully adjudicate Ms. Pablo Sequen’s claims, and it
26 retains jurisdiction over her claims. [T]here is no question that Ms.
27 Alvarado Ambrocio and Ms. Garcia’s habeas claims present a live case
28 or controversy within the scope of this Court’s Article III jurisdiction.

25 *See Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 2935630, at *4
26 (N.D. Cal. Oct. 15, 2025) (emphasis added, citations omitted). *See also Tang v.*
27 *Bondi*, No. 2:25-CV-01473-RAJ, 2025 WL 3551381, at *2 (W.D. Wash. Dec. 11,

28 Petitioner’s Reply to Respondents’
Response to Order to Show Cause for PI

Case No. 5:25-cv-03404-WLH-SP

2025); *N-E-M-B v. Wamsley*, No. 3:25-cv-989-SI, 2025 WL 3527111, at *5-6 (D. Or. Dec. 9, 2025); *Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *4 (W.D. Wash. Oct. 10, 2025) (and cases cited therein).

Here, N.Y.V.D. was released from detention merely because this Court granted her TRO. Dkt. 11. Thus, Respondents only released her because this Court ordered it to—constituting cessation but not even the voluntary conduct that the Supreme Court has emphasized is insufficient to moot a case. *See Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (a defendant has a “heavy burden” to show that its voluntary cessation has not mooted a case to ensure it cannot “engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.”); *N-E-M-B*, 2025 WL 3527111, at *5-6 (voluntary cessation exception applies in immigration habeas cases). Absent this Court’s PI, Respondents will be able to simply re-arrest N.Y.V.D., then either unlawful removal her from the country, or release her upon Court order and again claim that any PI or habeas is moot, and continue the cycle of abusing her procedural due process rights. Until N.Y.V.D. has obtained a permanent injunction, the threat of her unlawful detention remains.

B. N.Y.V.D.’s Re-Detention is a Reality and She Meets the “Constructive Custody” Requirement.

In this case, a PI preventing N.Y.V.D.’s unlawful re-detention (which now necessarily requires revocation of her OSUP) would prevent the irreparable violation of her due process rights and would merely maintain the status quo that has existed since N.Y.V.D. was released ORR on November 19, 2022. Furthermore, it would prevent Respondents from unlawfully re-detaining her and removing her subject to her now erroneously-issued order of expedited removal.

i. N.Y.V.D.’s unlawful re-detention is a realistic possibility.

Respondents ignore reality by arguing that N.Y.V.D.’s “release from DHS custody” moots the requested PI and habeas. Response at 1. First, both the legal

Petitioner’s Reply to Respondents’ Case No. 5:25-cv-03404-WLH-SP
Response to Order to Show Cause for PI

1 databases and the general news reports contain widespread documentation regarding
2 the re-detention of individuals from like N.Y.V.D. who have been unlawfully re-
3 arrested despite being under conditional release, including OSUP, and in
4 contravention to both the Due Process Clause and ICE's own regulations. Thus,
5 N.Y.V.D.'s fears that she will once again be unlawfully re-detained absent this
6 Court's intervention is a reality. Her request is necessary to ensure that the status
7 quo is maintained and that she is not subjected to the irreparable harm of an unlawful
8 and unconstitutional detention during the pendency of these proceedings, as she was
9 already subjected to in November 2025.

10 Now, N.Y.V.D.'s concerns that ICE could easily re-detain her are even
11 greater, as ICE has ordered her to report to both ICE and ISAP offices every single
12 month, in some months she will be reporting to both offices in the same month, and
13 she is subject to electronic monitoring 24/7 through her ankle monitor. In addition,
14 ICE is currently alleging violations of ATD—minor or unfounded—as a pretense to
15 revoke conditions and re-arrest individuals. *See El-Ghazaly v. Chestnut*, No. 1:25-
16 CV-01621-DC-CKD (HC), 2025 WL 3485030, at *5 (E.D. Cal. Dec. 4, 2025); *Bello*
17 *Chacon v. Hermosillo*, No. 2:25-CV-02299-TMC, 2025 WL 3562666, at *3 (W.D.
18 Wash. Dec. 12, 2025); *Garcia-Aleman v. Thompson*, No. SA-25-CV-886-OLG
19 (HJB), 2025 WL 3534806, at *2 (W.D. Tex. Nov. 24, 2025), report and
20 recommendation adopted, No. SA-25-CV-00886-OLG, 2025 WL 3532179 (W.D.
21 Tex. Dec. 9, 2025). Thus, she is at greater risk of being re-detained at any point—
22 including every month while conducting her check-ins.

23 **ii. PI relief is appropriate because N.Y.V.D. meets the “custody”**
24 **requirement.**

25 In addition, N.Y.V.D.'s request is appropriate because she meets the
26 “custody” requirement, as she is in “constructive custody.” On December 24, 2025,
27 N.Y.V.D. was released on an OSUP and subject to several conditions of release—
28 which constitute additional and very restrictive conditions that were not in this

1 Court's TRO order and that did not exist prior to her arrest in November 2025. As
2 noted above, N.Y.V.D. must report to ISAP every month, to ICE every two months,
3 and will be electronically monitored 24/7 via her ankle monitor.

4 When an individual like N.Y.V.D. is released from custody on an OSUP, the
5 OSUP imposes a number of restrictions on her liberty, including the requirement
6 that she report to ICE whenever instructed. Such stringent requirements "impose[]
7 conditions which significantly confine and restrain [her] freedom; this is enough to
8 keep [her] in the 'custody' of [the DHS] within the meaning of the habeas corpus
9 statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963); *see also Rodriguez v.*
10 *Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that comparable supervision
11 requirements constitute "custody" sufficient to support habeas jurisdiction).

12 In addition, ICE improperly imposed additional conditions that did not exist
13 prior to her November 2025 arrest and which this Court did not order, placing her
14 in greater "custody" and should be invalidated. *See Menjivar Sanchez v. Wofford*,
15 No. 1:25-CV-01187-SKO (HC), 2025 WL 3089712, at *10 (E.D. Cal. Nov. 5,
16 2025); *N-N v. McShane*, No. 25-5494, 2025 WL 3143594, at *2, *4 (E.D. Pa. Nov.
17 6, 2025); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 69 (D. Mass. 2025).

18 Thus, because N.Y.V.D. is in "constructive custody" pursuant to her OSUP
19 and very restrictive monitoring conditions, she properly seeks an order to prevent
20 her unlawful re-arrest and erroneous re-detention, and requests this court to enjoin
21 ICE from imposing such restrictive conditions that did not exist prior to her
22 November 2025 arrest.

23 Therefore, the public interest overwhelmingly favors entering a PI and not
24 rejecting this petition as moot.

25 **C. N.Y.V.D. Clearly Establishes a Likelihood of Irreparable Harm, and**
26 **the Balance of Harms and Public Interest Weigh in Favor of Relief.**

27 Given that N.Y.V.D. is likely to succeed on the merits of her claims, and that
28 her claims are constitutional in nature, she has sufficiently demonstrated that she

1 will suffer harm absent injunctive relief. The factors under the balancing test
2 established in *Mathews v. Eldridge* weigh heavily in her favor, as this Court already
3 found. Dkt. 11; 424 U.S. 319, 335 (1976). While Respondents do not contest the
4 well-settled principle that a violation of constitutional rights constitutes irreparable
5 injury, *Hernandez v. Sessions*, 872 F.3d 976, 995-96 (9th Cir. 2017), Respondents
6 suggest that if N.Y.V.D. is re-arrested, then it should after that future re-arrest that
7 she should file for injunctive relief and a habeas petition. Dkt. 12 at 3. However, the
8 mere deprivation of her constitutional rights—which already occurred once—
9 constitutes the irreparable injury, and this Court already determined that she is likely
10 to succeed in the merits of her claim that her re-detention violated her constitutional
11 and regulatory rights. Dkt. 11.

12 N.Y.V.D. further demonstrates that the balance of harms and public interest
13 weigh in favor of relief. If a PI is not entered, Respondents would effectively be
14 granted permission to re-detain her arbitrarily, whenever and for however long they
15 wish, in violation of the requirements of Due Process. “The public interest and the
16 balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional
17 rights.’” *Ariz. Dream Act Coal.*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also*
18 *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that
19 ensures that individuals are not deprived of their liberty and held in immigration
20 detention because of bonds established by a likely unconstitutional process.”); *cf.*
21 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

22 N.Y.V.D. has amply demonstrated that she faces irreparable harm and that
23 the balance of equities tips in her favor. In addition, Respondents “cannot
24 reasonably assert that it is harmed in any legally cognizable sense by being enjoined
25 from [statutory and] constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727
26 (9th Cir. 1983). Respondents have all of the power to locate, arrest, and detain a
27 non-citizen such as N.Y.V.D. if and when such detention is legally permissible.

1 Respondents will thus not be injured by an order prohibiting them from re-detaining
2 her unless she is provided with a due process hearing where the parties can fully
3 litigate the legality of her re-detention. Such a hearing is constitutionally mandated,
4 and the government is not injured by being held to the Constitution. *Zepeda*, 753
5 F.2d at 727. As such, the balance of equities and public interest weigh heavily in
6 favor of granting N.Y.V.D. injunctive relief.

7 **D. In Its PI, the Court Should Also Declare the Expedited Removal**
8 **Order Legally Invalid.**

9 The Court held “the INA precludes DHS from placing [N.Y.V.D.] in
10 expedited removal proceedings.” Dkt. 11, at 8 (citing 8 U.S.C. § 1225(b)(1)),
11 adopting the statutory construction in *Coalition For Humane Immigrant Rights, v.*
12 *Noem*, which found that the expedited removal statute “forbids the expedited
13 removal of noncitizens who have been, at any point in time, paroled into the United
14 States.” Dkt. 11, at 7 (quoting 2025 WL 2192986, at *3, 22 (D.D.C. Aug. 1, 2025)).
15 The Court also agreed with other federal courts that a noncitizen who is not an
16 arriving noncitizen and who was initially released on her own recognizance cannot
17 subsequently be designated for expedited removal. Dkt. 11, at 7 (citations omitted).

18 Here, as the Court accurately analyzed, Petitioner entered the U.S. soon
19 before being apprehended by Respondents who then paroled N.Y.V.D. into the
20 United States in November 2022, pursuant to INA § 212(d)(5), and although they
21 could have placed her in expedited removal proceedings at that time, they did not.
22 Dkt. 11, at 8. In addition, DHS issued N.Y.V.D. a “call-in letter” in which it ordered
23 her to appear at ICE for enrollment in an ATD program, informed her about her
24 legal rights and procedures for filing her asylum application before USCIS (which
25 is not possible if expedited removal had been initiated), and instructed her that
26 failure to appear at ICE could result in detention or additional supervisory
27 conditions. *See* ZN Decl. at Exhibit A. USCIS processed her asylum application
28 and issued her work authorization pursuant to it. Only after N.Y.V.D.’s detention

Petitioner’s Reply to Respondents’
Response to Order to Show Cause for PI

Case No. 5:25-cv-03404-WLH-SP

1 in November 2025 did Respondents first inform her, three years after her entry to
2 the United States, that she was subject to expedited removal. On December 23,
3 2025, the IJ affirmed N.Y.V.D.'s negative fear determination and ordered N.Y.V.D.
4 removed from the United States pursuant to expedited removal.

5 To prevent further injury as a result of the unlawful order for expedited
6 removal, N.Y.V.D. respectfully requests that the Court declare in its PI—just as it
7 already did in its TRO grant—that the INA precludes DHS from placing her in
8 expedited removal, and that her December 23 removal order is legally invalid.

9 Finally, N.Y.V.D. requests that, in light of Respondents' unlawful and
10 unconstitutional arrest, and unlawful processing her under expedited removal,
11 jurisdiction over her asylum application must remain with USCIS. The only reason
12 for USCIS' dismissal of the I-589 was Respondents' unlawful processing of
13 N.Y.V.D. pursuant to expedited removal. Because the INA precluded DHS from
14 placing her in expedited removal proceedings (Dkt. 11, at 8), USCIS improperly
15 dismissed N.Y.V.D.'s Form I-589. Thus, this Court should direct USCIS to revoke
16 the dismissal and retain jurisdiction over her asylum application.

17 **IV. CONCLUSION**

18 For all the above reasons, N.Y.V.D. warrants a PI that Respondents not re-
19 detain her unless she is afforded notice and a hearing before a neutral adjudicator on
20 whether it is justified by evidence that she is a danger to the community or a flight
21 risk, and that her expedited removal order is legally invalid and thus USCIS must
22 still have jurisdiction over Petitioner's I-589. In addition, that she must be restored
23 to the same supervisory conditions she was in prior to her re-arrest.

24
25 Dated: January 2, 2026

Respectfully submitted,
/s/ Zachary Nightingale
Zachary Nightingale
Attorney for Petitioner

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28 Petitioner's Reply to Respondents'
Response to Order to Show Cause for PI

Case No. 5:25-cv-03404-WLH-SP