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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

Lissa Mel Hatanaka a/k/a Lissa Melissa Mel-Turdiev,

Petitioner,

v.

Fred Figueroa, in his official capacity, Warden of Eloy Detention Center;

John Cantu, in his official capacity, ICE Enforcement and Removal Operations Phoenix Field Office Director;

Todd M. Lyons, in his official capacity, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi Noem, in her official capacity, Secretary, U.S. Department of Homeland Security;

Pamela Bondi, in her official capacity, Attorney General of the United States;

U.S. Immigration and Customs Enforcement; and

U.S. Department of Homeland Security,

Respondents.

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

MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION;

POINTS AND AUTHORITIES IN SUPPORT OF MOTION

NOTICE OF MOTION

Pursuant to Federal Rule of Civil Procedure 65, Lissa Mel Hatanaka ("Petitioner" or "Ms. Hatanaka") hereby applies for a temporary restraining order and order to show cause regarding a preliminary injunction, commanding Respondents to immediately release Petitioner unless and until she is provided with a constitutionally compliant hearing in which Respondent Department of Homeland Security ("DHS") proves to a neutral adjudicator, by clear and convincing evidence, that she presents a current danger and unmitigable flight risk. This Application is based upon the following Memorandum of Points and Authorities, Petitioner's Petition for Writ of Habeas Corpus (Doc. 1), and the Exhibits filed in support thereof.

Dated: July 14, 2025

Respectfully Submitted,

/s/Ami Hutchinson
Ami Hutchinson
Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, Ms. Hatanaka, is currently detained by Immigration and Customs Enforcement ("ICE") at Eloy Detention Center in Eloy, Arizona. She has been detained since May 15, 2025, when she was arrested by masked ICE officers in Los Angeles in the middle of her adjustment of status interview. Ms. Hatanaka was originally placed on an Order of Supervision on May 8, 2020, and again on May 17, 2021. In 2022, ICE removed her GPS monitor and told her she no longer needed to report. Since then, she has proven herself to be a valued and productive member of society. For reasons which are fully explained in Ms. Hatanaka's Petition for Writ of Habeas Corpus, she respectfully submits that she was entitled to a hearing *prior* to any re-detention, at which she would be afforded the opportunity to advance her arguments as to why re-detention is unwarranted. In its absence, she requests that this Court order her immediate release unless and until a neutral decisionmaker determines that DHS has justified her incarceration by clear and convincing evidence.

STATEMENT OF FACTS

Petitioner Lissa Mel Hatanaka ("Ms. Hatanaka") is currently detained at Eloy Detention Center in Eloy, Arizona. She is thirty-six years old. *See* Declaration of Ami Hutchinson (hereinafter "Hutchinson Decl.") at Exhibit ("Exh.") A, Declaration of Ms. Hatanaka (hereinafter "Hatanaka Decl.") at ¶ 1.[1]

[1] All references herein refer to Ms. Hatanaka's Petition for Writ of Habeas Corpus and the documents submitted in support thereof.

Ms. Hatanaka's Childhood, Life as a Single Mother, and Work in the Binary Options Industry

Following a difficult childhood in Uzbekistan, Ms. Hatanaka and her family migrated to Israel when she was ten years old. Hatanaka Decl. at ¶ 4. There, she was ridiculed for her appearance and how she spoke. *Id.* ¶ 7. After her parents' second divorce, Ms. Hatanaka was raised by her single mother, who worked multiple jobs but nonetheless struggled to make ends meet. *Id.* ¶ 7. Like both of her parents, Ms. Hatanaka was an accomplished runner. *Id.* ¶ 8.

Following her mandatory two-year military service requirement, Ms. Hatanaka enrolled at the Mahon Avni Institute of Art in Tel Aviv, where she hoped to hone her skills as an artist. *Id.* ¶ 11. She withdrew from school, however, after an unplanned pregnancy. *Id.* Despite the baby's father's demands, Ms. Hatanaka refused to terminate the pregnancy and vowed to raise her daughter alone. *Id.* ¶ 12. She therefore made finding a stable job her top priority. *Id.* ¶ 13.

After months of searching, Ms. Hatanaka was hired by Yukom Communications ("Yukom"), an Israel-based business that provided sales and marketing services, including "retention services," for two internet-based businesses with the brand names BinaryBook and BigOption. Ms. Hatanaka was later transferred to Numaris Communication ("Numaris"), an affiliate organization. *Id.* ¶¶ 15-17.

Ms. Hatanaka's role at both Yukom and Numaris was that of "sales representative." Her primary function was to place calls to current and prospective customers to induce them to make investments in the binary options trading business. *Id.*

¶ 19. At the time, the binary options industry was legal (and flourishing) in Israel. Looking back, however, Ms. Hatanaka readily admits that the services provided by Yukom and Numaris were fraudulent and caused financial harm to vulnerable people. *Id.* ¶¶ 20, 34.

In 2015, Ms. Hatanaka began a romantic relationship with the office manager at Numaris, resulting in resentment among her coworkers. *Id.* ¶ 21. At home, her boyfriend was both physically and verbally abusive. *Id.* ¶ 22.

In 2016, after eighteen months of employment with Yukom and Numaris, Ms. Hatanaka resigned from her position and, using her savings, moved out of her boyfriend's home while he was away. *Id.* ¶ 24. A few months later, she found new employment with a legitimate company; she believed this difficult chapter in her life was over. *Id.* ¶¶ 25, 27.

Ms. Hatanaka's Travels to the United States and Criminal Proceedings

In September of 2018, Ms. Hatanaka traveled to the United States for vacation, leaving her young daughter in the care of her mother in Israel. *Id.* ¶ 26. At the time, Ms. Hatanaka was aware that top Yukom executives were being investigated but had been reassured that she had nothing to worry about because she was a "nobody." *Id.* ¶ 27. For this same reason, Ms. Hatanaka did not hesitate to speak candidly when, the day after her arrival in the United States, two FBI agents questioned her for about two hours regarding her employment with Yukom and Numaris. *Id.* ¶ 29.

On September 17, 2018, Ms. Hatanaka was arrested as she was boarding her flight in Los Angeles to return to Israel. *Id.* ¶ 31. To her surprise, Ms. Hatanaka had been charged, in the U.S. District Court for the District of Maryland, with one count of Conspiracy to

Commit Wire Fraud. *Id.* ¶ 32.

Ms. Hatanaka was transferred to Chesapeake Detention Facility in Maryland, where she remained until October 25, 2018, when she was released on a secured bond with pretrial conditions of supervision. *Id.* ¶ 33.

For the next ten months, Ms. Hatanaka resided in California and successfully complied with the terms and conditions of her release, including house arrest and GPS tracking. Ms. Hatanaka was only permitted to leave the apartment to go to yoga and synagogue. *Id.* ¶ 38. Her daughter, meanwhile, remained in Israel and turned 4 years old.

During her period of pretrial release, Ms. Hatanaka returned to Maryland multiple times to meet with her attorneys and attend hearings. She never attempted to flee the country.

On January 29, 2019, Ms. Hatanaka pleaded guilty to a one-count Information, which charged her with conspiracy to commit wire fraud in violation of 18 U.S.C. § 371. Hutchinson Decl. at Exh. B (Judgment).

Following multiple postponements to fulfill the terms of her cooperation plea, Ms. Hatanaka was sentenced on August 29, 2018, to a term of 12 months and 1 day, with supervised release for a term of 2 years, and restitution in the amount of $288,024.00. *Id.*

Ms. Hatanaka Successfully Serves Her Sentence, Completes Probation, and Complies with Her Order of Supervision

Although her incarceration was difficult, Ms. Hatanaka made the best of her situation. Hatanaka Decl. at ¶ 41. She taught yoga, led meditation, and painted murals with uplifting messages on the walls of FTC-Danbury. *Id.* ¶ 42. She also spent time

writing, knitting, and working in the kitchen. *Id.*

During her incarceration, a tumor in Ms. Hatanaka's thyroid grew, but she could not be treated due to restrictions caused by COVID-19. *Id.* ¶ 43. Consequently, Ms. Hatanaka's request for Compassionate Release was granted and she was released two weeks early on May 8, 2020. Hutchinson Decl. at ¶ 8; Hatanaka Decl. at ¶ 45.

As of the day of her release, ICE was aware of Ms. Hatanaka's conviction and, therefore, aware that she was amenable to an administrative order of removal and mandatory detention. Hutchinson Decl. at Exh. C. Rather than detain Ms. Hatanaka, however, ICE put her on an Order of Supervision and issued paperwork indicating that she had been placed into removal proceedings. *Id.*

Ms. Hatanaka returned to California, where she successfully completed her probation. Hutchinson Delc. ¶ 10; Hatanaka Decl. ¶¶ 47-48.

In California, Ms. Hatanaka met with an immigration attorney and applied for asylum. Hatanaka Decl. at ¶ 47. She married her first husband on June 25, 2021, and ultimately submitted an I-360 Self-Petition under the Violence Against Women Act, which was based on abuse she suffered during that marriage. *Id.* ¶ 52. Ms. Hatanaka filed for divorce in January 2022. *Id.*

On May 17, 2021, after completing her probation, Ms. Hatanaka was arrested by ICE but ultimately released, placed on a second Order of Supervision, and enrolled in the Alternatives to Detention program. Hutchinson Decl. at Exh. D. ICE also apparently issued an administrative order of removal and referred Ms. Hatanaka's case to USCIS for

a reasonable fear interview. *Id.*; Hatanaka Decl. ¶ 48. Despite being subject to mandatory detention, Ms. Hatanaka was not detained.

Over the next year, Ms. Hatanaka attended ICE check-ins on May 24, 2021; June 30, 2021; November 9, 2021; and May 9, 2022. Hutchinson Decl. at Exh. E.

Although an interview was scheduled, Ms. Hatanaka recalls that her attorney failed to show, and USCIS said they would reschedule. Hatanaka Decl. at ¶ 48.

During her final check-in, ICE removed Ms. Hatanaka's GPS monitor and told her she did not need to report anymore. *Id.* ¶ 49. Ms. Hatanaka had no further contact with ICE until May 15, 2025. *Id.*

Ms. Hatanaka Marries her U.S. Citizen Husband and Continues Her Commitment and Contributions to the Community

In the summer of 2022, Ms. Hatanaka met her current husband, Tetsuo Bobby Hatanaka ("Mr. Hatanaka"), who was born in the United States. *Id.* ¶ 53. They married on March 27, 2023. *Id.* ¶ 54.

Following their marriage, Mr. Hatanaka filed an I-130 Petition on behalf of his wife, and Ms. Hatanaka submitted an application for adjustment of status. *Id.* ¶ 67. Ms. Hatanaka did not try to hide her criminal history. *Id.* ¶ 68.

Since her release from prison on May 8, 2020, Ms. Hatanaka has proven herself to be a talented entrepreneur and a beloved member of her community in Los Angeles and beyond.

Since 2020, she has taught yoga and volunteered at Nine Treasures Yoga Studio, which she considers to be her spiritual home. *Id.* ¶ 57.

In 2021, Ms. Hatanaka obtained a certificate in phlebotomy from the Promed Career Institute. Hutchinson Decl. at ¶ 23. She has since worked as a medical assistant for Transformation Healing Universe, a holistic healing center where Ms. Hatanaka helps others heal from trauma and emotional pain. Hatanaka Decl. at ¶ 66.

Ms. Hatanaka has also devoted substantial time and energy to creating and sharing a love and appreciation for art. In 2023, she opened an art gallery in Santa Monica called Messengers. *Id.* ¶ 58.

Messengers was a contemporary art gallery that showcased the work of over 20 artists per month. *Id.* It is also where Ms. Hatanaka taught art classes to women and children, particularly those who had been impacted by domestic violence. *Id.* ¶ 61.

Ms. Hatanaka ran the gallery until early 2025, when she was forced to close due to the fires in Los Angeles and the terms of her lease. *Id.* ¶ 60. While it was open, however, Messengers catapulted Ms. Hatanaka to the top of L.A.'s art scene. Hutchinson Decl. at ¶ 22, Exh. G.

In addition to sharing the work of others, Ms. Hatanaka creates art. Over the past several years, her work has been featured in galleries across the United States, including Las Vegas, Dallas, Miami, and New York City. Hatanaka Decl. at ¶ 59.

Ms. Hatanaka has also proven herself to have great business acumen, having started two online businesses: Lorenmarie and Phoenix Aurea Inc. *Id.* ¶ 62. Through each company, Ms. Hatanaka endeavors to spread positivity through art and fashion. *Id.*

At the time of her arrest, Ms. Hatanaka was working on a new application called

"Art Angels," which she hopes will bridge the gap between artists and galleries. *Id.* ¶ 64.

Ms. Hatanaka's Arrest and Current Detention

On May 15, 2025, Ms. Hatanaka and her husband were interviewed at USCIS in Los Angeles in connection with Ms. Hatanaka's application for adjustment of status. *Id.* ¶ 70. It was there that Ms. Hatanaka was arrested by two masked officers, held incommunicado for nearly 24 hours, and ultimately transferred to Eloy Detention Center in Eloy, Arizona. *Id.* ¶¶ 70-72.

DHS initiated removal proceedings under 8 U.S.C. § 1229a when it filed a Notice to Appear on May 27, 2025. Hutchinson Decl. at Exh. H.

On June 11, 2025, DHS filed a Motion to Dismiss the NTA as "improvidently issued." *Id.* at Exh. I. That motion was not accepted by the Immigration Court until the following morning, shortly before Ms. Hatanaka's hearing. *Id.* at ¶ 28.

Without hearing arguments or considering any evidence, the Immigration Judge granted DHS's motion. *Id.* at Exh. J.

On July 11, 2025, Ms. Hatanaka filed an appeal with the Board of Immigration Appeals, which remains pending. *Id.* ¶ 30; Exh. K.

As of July 11, 2025, Ms. Hatanaka has been held in immigration detention without a constitutionally compliant bond hearing for 57 days.

LEGAL FRAMEWORK

Detention Authority

Section 236 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1226, "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022).

It is well-established that "[d]etention during removal proceedings is a constitutionally permissible part of [the removal] process." *Demore*, 538 U.S. at 531. However, detention, including that of a non-citizen, violates due process if there are not "adequate procedural protections" or "special justification[s]" sufficient to outweigh one's " 'constitutionally protected interest in avoiding physical restraint.' " *Id.* at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *Demore*, 538 U.S. at 516–17.

Section 1226(a) establishes the "default rule," *id.*, setting forth various procedures through which individuals *may* be detained pending a decision on whether they are to be removed. 8 U.S.C. § 1226(a). The INA further designates certain non-citizens to "mandatory" detention under 8 U.S.C. § 1226(c) ("The Attorney General shall take into custody any alien who [falls into one of several categories] when the alien is released, without regard to whether the alien is released on parole, supervised release, or probation ...."). One of the categories of non-citizens who "must" be detained are those who are deportable for having been convicted of an aggravated felony offense covered in 8 U.S.C. § 1227(a)(2)(A)(iii). *See* 8 U.S.C. § 1226(c)(1)(B). The Attorney General may not release

a non-citizen detained under section 1226(c) pending the outcome of their deportation proceedings unless release is necessary for witness protection, which is not at issue in this case. *See id.* § 1226(c)(2).

The Supreme Court has held that § 1226(c)'s mandatory detention provision applies even where the individual is not arrested and detained immediately following their release from criminal custody. *Nielson v. Preap*, 586 U.S. __, 139 S.Ct. 954, 959 (2019). In *Preap*, the Supreme Court rejected a facial challenge to § 1226(c), but expressly stated that its decision "on the meaning of the statutory provision does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute[.]" *Id.*; *see also Demore*, 538 U.S. at 532, (Kennedy, J., concurring) ("[S]ince the Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent resident alien such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified.").

In the present case, Ms. Hatanaka challenges the constitutionality of her arrest and detention without a bond hearing. Specifically, she argues that 8 U.S.C. § 1226(c), as applied to her specific factual circumstances, is unconstitutional where Respondents were aware that she was eligible for detention and removal when she was released from criminal custody, but did not detain her for a period of five years, during which time she was "law-abiding and by all measures built a new life." *Perera v. Jennings*, 598 F.Supp.3d 736, 744 (2022).

Authority Under 8 U.S.C. §§ 1228(b) and 1229a

The INA distinguishes between removal proceedings under Section 240, 8 U.S.C. § 1229a, and expedited removal proceedings under Sections 235 and 238. *See* 8 U.S.C. §§ 1225, 1228. Section 240 (8 U.S.C. § 1229a) proceedings are initiated when DHS files a Notice to Appear charging the noncitizen with inadmissibility under 8 U.S.C. § 1182 or deportability under 8 U.S.C. § 1227. *See* 8 C.F.R. § 1003.14.

In some cases, once the Notice to Appear is filed, the immigration judge *may*, upon the government's request, terminate the case and, "upon such termination, the [government] may commence administrative proceedings under section 238 [8 U.S.C. § 1228] of the Act." 8 C.F.R. § 238.1(e). The noncitizen may, however, appeal the immigration judge's decision to terminate proceedings. That decision does not become final until the appeal concludes. *See* 8 C.F.R. § 1241.1.

Further, under 8 U.S.C. § 1228(b), the Attorney General *may*, upon determining that a noncitizen who has been convicted of an aggravated felony under 8 U.S.C. § 1227(a)(2)(A)(iii) was not lawfully admitted for permanent residence at the time at which proceedings commenced, issue an administrative order of removal. The regulations governing section 1228(b) proceedings are found at 8 C.F.R. § 238.1.

Issuance of an administrative removal order under § 1228(b) is discretionary; the government may instead initiate removal proceedings under 8 U.S.C. § 1229a through the issuance of a Notice to Appear. Individuals subject to administrative orders under § 1228(b) are not eligible for any relief from removal that the Attorney General may grant

in the exercise of discretion. 8 U.S.C. § 1228(b)(5). However, noncitizens who express a fear of removal are entitled to a reasonable fear determination in accordance with 8 C.F.R. § 208.31. *See* 8 C.F.R. § 238.1(f)(3).

Due Process and the Authority to Re-Detain

Once ICE decides to grant conditional parole, a parolee has a due process interest in her continued liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (discussed *infra*). Consequently, and notwithstanding the breadth of the statutory language granting ICE the power to revoke a noncitizen's bond (or parole), the Board of Immigration Appeals ("BIA") has recognized an implicit limitation on ICE's authority to re-arrest noncitizens. *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge and where the previous release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances."

Saravia, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had been previously released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

Notably, it is unclear whether the above authority even applies to Ms. Hatanaka, who was released pursuant to an Order of Supervision that later expired.. Even still, it must be recognized that ICE's power to re-arrest a noncitizen who is at liberty following a release is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances, assuming applicability—is insufficient to protect Ms. Hatanaka's weighty interest in her freedom from detention.

Federal district courts in the Ninth Circuit and elsewhere have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Ms. Hatanaka, *before* ICE re-detains her. *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); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); ECF No. 9, *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, 2025).

As for the process due to noncitizen following their re-detention by ICE, the Eastern District of California's recent decision in *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025), is illustrative. In this case, Mr. Doe, a noncitizen from India, had been re-detained by ICE at a standard check-in more than five years after his release on a bond. *Id.* at *1. Notably, Mr. Doe had been arrested following his release on bond with charges dismissed after he successfully completed a diversion program, and he was the subject of an INTERPOL Red Notice. *Id.* at *5. Mr. Doe challenged his mandatory detention, arguing that his re-detention without review by a neutral adjudicator violated his due process rights. *Id.* at *1. In granting a preliminary injunction, the Court held that even with the new facts, Mr. Doe had established a strong likelihood of success in showing that he had an interest in his continued liberty and that mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due process rights unless he was afforded adequate process. *Id.* at *5. The Court further held that, after applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe was entitled to a hearing before an IJ to determine whether his detention is warranted. *Id.* at *6, *8. At this hearing, the

government bore the burden of establishing, by clear and convincing evidence, whether Mr. Doe posed a danger or a flight risk.

In assessing a petitioner's as-applied due process challenge, courts apply the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). "*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 probable 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 requirement would entail." *Id.* at 335

LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if she establishes that 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 [his] 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) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if Ms. Hatanaka raises "serious questions" as to the merits of her claims, the balance of hardships tips "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).

ARGUMENT

I. MS. HATANAKA IS LIKELY TO SUCCEED ON HER CLAIM THAT HER CONTINUED DETENTION WITHOUT DUE PROCESS VIOLATES HER CONSTITUTIONAL RIGHTS

Ms. Hatanaka's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

For at least three years preceding her re-detention on May 15, 2025, Ms. Hatanaka exercised that freedom under ICE's 2022 decision to remove her GPS monitor and discontinue check-ins. Even prior to the removal of the GPS tracker, Ms. Hatanaka retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration after ICE issued its first Order of Supervision on May 8, 2020. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483.

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the

parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See*

id.; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Ms. Hatanaka's release "enables [her] to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Noncitizens released on a bond have a similar liberty interest. *See Doe*, 2025 WL 691664, at *5 ("Petitioner, having been released at a bond hearing over five years ago, has a similar liberty interest."); *Diaz*, 2025 WL 1676854, at *2 ("Courts have previously found that individuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond."); *see also Jorge M.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. March 1, 2021) (holding that a Mexican citizen with pending removal proceedings who had been released on bond had "a substantial private interest in remaining on bond"); *see*

also Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

Since her release in May 2020, Ms. Hatanaka has lived in California, where her contributions to the art world are widely acclaimed. Hutchinson Decl. at Exh. G. She successfully completed her federal probation and, following a brief arrest by ICE, was on an Order of Supervision and attending appointments with ICE through at least May of 2022. Hatanaka Decl. at ¶¶ 46-49. She has applied for several forms of relief with USCIS and faithfully provided all required information and attended biometrics appointments as necessary. In 2024, she was granted work authorization. She has consistently taught, volunteered, furthered her education, and created art, all with the goal and purpose of inspiring and uplifting others. *Id.* ¶¶ 57-66. She is married to a U.S. citizen and prima facie eligible for adjustment of status in conjunction with a waiver. Hutchinson Decl. at ¶ 20. In short, while she was released, Ms. Hatanaka was able to participate in the "attachments of normal life," *Morrissey*, 408 U.S. at 482, and as such, she has a protected liberty interest and she is likely to demonstrate that her continued detention without adequate process violates her due process rights.

Ms. Hatanaka's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond or Parole

Ms. Hatanaka asserts that, here, (1) where her detention is civil, (2) she has diligently complied with ICE's reporting requirements on a regular basis, and was in fact dismissed from her Order of Supervision, (3) has an appeal pending before the Board of Immigration Appeals, (4) there have been no material changes in circumstances, (5) and ICE has not provided any evidence that would support Ms. Hatanaka's re-detention, due

process mandates that she was required to receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of a bond.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Ms. Hatanaka's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *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." *Zinermon 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 the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, 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" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Ms. Hatanaka with notice and a hearing *prior* to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Ms. Hatanaka's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

Ms. Hatanaka's Private Interest in Her Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty

interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Ms. Hatanaka, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Ms. Hatanaka retains a truly weighty liberty interest.

What is at stake in this case for Ms. Hatanaka is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond or parole decision and be able to take away her physical freedom, i.e., her "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *see also Doe*, 2025 WL 691664,

at *5 ("It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his out-of-custody status.").

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

II. The Balance of Equities and Public Interest Sharply Favor Ms. Hatanaka

The government's interest in keeping Ms. Hatanaka in detention without a due process hearing is low, and when weighed against Ms. Hatanaka's significant private interest in her liberty, the scale tips sharply in favor of releasing her from custody unless and until the government demonstrates by clear and convincing evidence that she is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Ms. Hatanaka when the Court considers that the process she seeks—release from custody pending notice and a hearing regarding whether she should be redetained or a new bond amount should be set—is a standard course of action for the government. In the alternative, providing Ms. Hatanaka with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that she is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to detained individuals like Ms. Hatanaka.

Immigration detention is civil and can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to

prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Ms. Hatanaka in May 2025, during her adjustment of status interview, when it has been aware of her conviction for over five years.

As to flight risk, Ms. Hatanaka has repeatedly proven herself to be anything but. In 2018 and 2019, while on pretrial release, she returned to Maryland for hearings, to meet with her attorneys, to fulfill her obligations under the cooperation plea, and for sentencing. After her release from FTC-Danbury, she successfully completed probation and was put on an Order of Supervision by ICE. Ms. Hatanaka attended her check-ins faithfully and wore a GPS monitor, which ICE eventually removed. Even after her Order of Supervision, Ms. Hatanaka submitted several applications with USCIS, each of which contained her correct address and contact information. Moreover, she was frequently featured in articles about her art and The Messengers gallery, and she was active on social media. Ms. Hatanaka was not hiding; she was in plain sight.

The government's interest in detaining Ms. Hatanaka at this time is therefore low. That ICE has new policies under the new administration does not constitute a material change in circumstances in her case or increase the government's interest in detaining her. Moreover, the "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Ms. Hatanaka does not seek a unique or

expensive form of process, but rather her release from custody until a routine hearing regarding whether her detention is justified.

In the alternative, providing Ms. Hatanaka with an immediate hearing before this Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that the government provides to those in immigration jails on a daily basis. *See Doe* at *6 ("The effort and cost required to provide Petitioner with procedural safeguards is minimal and indeed was previously provided in his case."). At that hearing, the Court would have the opportunity to determine whether Ms. Hatanaka is a danger or flight risk, and what bond, if any, is sufficient to mitigate those risks.

Release from custody until ICE (1) moves for a bond re-determination before an Immigration Judge and (2) demonstrates by clear and convincing evidence that Ms. Hatanaka is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping her detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for Ms. Hatanaka at which the government bears the burden of justifying her continued detention, the government would bear no additional cost if the hearing is scheduled within fourteen days, rather than allowing Ms. Hatanaka to sit in detention for weeks or months awaiting a decision in her appeal.

Releasing Ms. Hatanaka from custody until she is provided a pre-deprivation

hearing would also decrease the risk of her being erroneously deprived of her liberty. Before Ms. Hatanaka can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE's May 8, 2020, or May 17, 2021, determinations should be altered or revoked because clear and convincing evidence exists to establish that Ms. Hatanaka is a danger to the community or a flight risk. *See e.g. Diaz*, 2025 WL 1676854, at *3 (finding that "the three factors relevant to the due process inquiry set out in *Mathews*…support requiring a pre-detention hearing for [Mr. Diaz as he] has a substantial private interest in remaining out of custody on bond, which enables him to do a wide range of things open to persons who are free from custody, such as working, living at home, and being with family and friends ... to form the enduring attachments of normal life"). Ms. Hatanaka has already been erroneously deprived of her liberty, and the risk that she will continue to be deprived is high if ICE is permitted to keep her detention after making a unilateral decision to re-detain her. Ms. Hatanaka was previously granted release via parole; no statutory mechanism provides her any process before a neutral adjudicator following her re-detention. As a result, under current procedures, the validity or necessity of Ms. Hatanaka's re-detention would evade any review by the IJ or any other neutral arbiter.

By contrast, the procedure Ms. Hatanaka seeks—release from custody and reinstatement of her prior parole until she is provided a hearing in front of a neutral adjudicator at which the government proves by clear and convincing evidence that

circumstances have changed to justify her re-detention, *see Doe*, 2025 WL 691664, *8—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain circumstance constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"); *see also Doe*, 2025 WL 691664, *1. "A neutral judge is one of the most basic due process protections. *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Due process also requires consideration of alternatives to detention and ability to pay at any custody redetermination hearing that may occur. *See e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 997 (9th Cir. 2017) ("Plaintiffs are likely to succeed on their challenge under the Due Process Clause to the government's policy of allowing ICE and IJs to set immigration bond amounts without considering the detainees' financial circumstances or alternative conditions of release."); *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at *10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not

reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. Accordingly, alternatives to detention and ability to pay must be considered in determining whether Ms. Hatanaka re-incarceration is warranted.

Based on the foregoing, any harm to the government should the temporary restraining order be granted is negligible at best. In addition, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). The public is also served by ensuring that the government does not expend its resources to detain individuals unnecessarily, and without adequate process. *See Hernandez*, 872 F.3d at 996 (noting "staggering" costs of immigration detention); *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Finally, as set forth *supra*, Ms. Hatanaka asks this Court to find that Petitioner has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purposes of granting a Temporary Restraining Order. Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) specific facts in an affidavit . . . clearly show that immediate and irreparable injury, loss or damage will result to the petitioner before the adverse party can

be heard in opposition; and 2) the petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Ms. Hatanaka respectfully submits that sufficient notice has been given to Respondents since the Chief of the Civil Division of the United States Attorney's Office has been provided with a copy of the instant motion. *See* Exhibit A, Letter from Ami Hutchinson to Katherine Branch, July 14, 2025. The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as Defendants or Respondents. While proper service may not have been made on Respondents' counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met. *See* Exhibit B, Affidavit of Ami Hutchinson.

CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, this Court should hold that Ms. Hatanaka is likely to succeed on the merits of her pending Petition for Writ of Habeas Corpus, that she is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in her favor, and that the requested injunction is in the public interest. Specifically, Ms. Hatanaka requests this Court to enter the following findings and orders:

A. That Petitioner's continued detention with process is unlawful;

B. That a temporary restraining order is necessary to ensure that Respondents do not transfer Petitioner out of the District of Arizona;

C. That Respondents must release Ms. Hatanaka from immigration detention immediately, unless and until a neutral arbiter determines by clear and convincing evidence that she is a present danger or an unmitigable flight risk after taking into consideration alternatives to detention and her ability to pay a bond, such that her re-incarceration is warranted;

D. That this Court grant any other relief it deems necessary and proper.

Dated: July 14, 2025

Respectfully submitted,

s/ Ami Hutchinson
Ami Hutchinson
Attorney for Petitioner