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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF
12 CALIFORNIA

13 R.D.T.M.,
14 Petitioner-Plaintiff,

15 v.

16 Minga WOFFORD, Field Office Director, Mesa
17 Verde, Office of Detention and Removal, U.S.
18 Immigrations and Customs Enforcement; U.S.
19 Department of Homeland Security;

20 POLLY KAISER, Acting Field Office Director of
21 the San Francisco Immigration and Customs
22 Enforcement Office

23 Todd M. LYONS, Acting Director, Immigration
24 and Customs Enforcement, U.S. Department of
25 Homeland Security;

26 Kristi NOEM, in her Official Capacity, Secretary,
27 U.S. Department of Homeland Security; and

28 Pam BONDI, in her Official Capacity, Attorney
General of the United States;

Respondents-Defendants.

Case No. 1:25-at-00786

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

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

INTRODUCTION

1
2 1. Petitioner, R.D.T.M, by and through her undersigned counsel, hereby files this petition
3 for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S.
4 Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE)
5 from continuing to detain her in an immigration jail pending resolution of her removal case
6 without first providing her a due process hearing where the government bears the burden to
7 demonstrate to a neutral adjudicator that she is a danger to the community or a flight risk by clear
8 and convincing evidence.

9 2. R.D.T.M. also seeks an order enjoining DHS from continuing to violate the undisturbed
10 release on recognizance that The Office of Refugee Resettlement (ORR) issued on January 26,
11 2023. The release was pursuant to section 462 of the Homeland Security Act (HSA) of 2002 (6
12 U.S.C. 279) and section 235 of the William Wilberforce Trafficking Victims Protection
13 Reauthorization Act of 2008 (TVPRA), because R.D.T.M. was an unaccompanied refugee child
14 (UC) when she entered the United States . 6 U.S.C. 279 established the ORR within the
15 Department of Health and Human Services (HHS) to care for and place unaccompanied
16 immigrant children who come into federal custody.

17 3. R.D.T.M. seeks her immediate release from detention in Mesa Verde ICE Processing
18 Center, where ICE unlawfully re-detained and continues to imprison her without a hearing and
19 without demonstrating that she is a flight risk or danger to the community, as required by the Due
20 Process clause of the Fifth Amendment.

21 4. R.D.T.M. is a class member of the *J.O.P. v. U.S. Department of Homeland Security*, Case
22 No. 8:19-cv-01944-SAG (D. Md.) settlement (the “JOP settlement”), holding, *inter alia*, that the
23 United States Citizenship and Immigration Services (USCIS) has jurisdiction over asylum
24 applications of eligible class members, and that ICE may not remove class members, even those
25 with a final order of removal, while their USCIS asylum application is pending.

26 5. Her arrest is part of a new, nationwide DHS strategy of sweeping up people who attend
27 their immigration court hearings, detaining them, and seeking to re-route them to fast-track
28 deportations. Since mid-May, DHS has implemented a coordinated practice of leveraging

1 immigration detention to strip people like R.D.T.M. of their substantive and procedural rights and
2 pressure them into deportation. Immigration detention is civil and thus is permissible for only two
3 reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the
4 community. But DHS did not arrest and detain R.D.T.M. - who demonstrably poses no risk of
5 absconding from immigration proceedings or danger to the community - for either of these
6 reasons. Instead, as part of its broader enforcement campaign, DHS detained R.D.T.M. to strip
7 her of her procedural rights, force her to forfeit her applications for relief, and pressure her into
8 fast-track removal.

9 6. R.D.T.M. came into immigration custody immediately after crossing the border into the
10 United States on January 14, 2023, as a seventeen-year-old minor. R.D.T.M. had lived in the
11 United States previously, from when she was around seven years old until she was around ten
12 years old. ICE claims that R.D.T.M. has a prior deportation order stemming from that entry;
13 however, R.D.T.M. is unaware of such an order because she was only ten years old, and she
14 voluntarily left the country a few years after entering. R.D.T.M.'s immigration counsel previously
15 requested R.D.T.M.'s full file through a Freedom of Information ("FOIA") request, and the results
16 produced no such prior deportation order.

17 7. Upon entry on January 14, 2023, R.D.T.M. was detained at the LSSS New Hope shelter
18 for minors for approximately eleven days. She was released from custody to a sponsor, her
19 mother, on January 26, 2023. DHS did not require R.D.T.M. to post a bond or wear an ankle
20 monitor.¹ Notwithstanding any alleged prior removal orders, on February 11, 2023, DHS sent
21 R.D.T.M. a Notice to Appear (NTA) placing her in removal proceedings in immigration court
22 pursuant to Section 240 of the Immigration and Nationality Act (INA) (section 240 proceedings).
23 The NTA charged R.D.T.M. with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as "an
24 alien present in the United States without being admitted or paroled, or who arrives in the United
25 States at any time or place other than as designated by the Attorney General."

26 8. Following her release, R.D.T.M. went to live with her mother, father and siblings in
27 Howard Lake, MN. She established a life in Howard Lake. On June 2, 2024, she graduated from

28 ¹ A true and correct copy of Petitioner's release documentation is attached hereto as Exhibit I.

1 Lake-Waverly-Winsted High School. School staff describe R.D.T.M. as someone who worked
2 “extremely hard” while keeping a positive attitude, being a “ray of sunshine” wherever she went.
3 Her school counselor described her as someone who promoted the values of “integrity, kindness,
4 and perseverance.” After graduating from high school, and before her unlawful detention,
5 R.D.T.M. was working as a child-care professional and was recently promoted to a paraeducator
6 position at Howard Lake-Waverly-Winsted Laker Care Program, caring for young children, and
7 also as a waitress at Maria’s Mexican Restaurant in Howard Lake. Her co-workers describe her
8 as the ideal role model for the local community children.

9 9. R.D.T.M. is a member of the St. John's Lutheran Church in
10 Howard Lake. She has volunteered with church activities, and her pastor describes her as a “kind,
11 responsible, and intelligent person, not to mention a devout and earnest Christian.” R.D.T.M. has
12 maintained a clean criminal record.²

13 10. R.D.T.M. has diligently worked on her immigration case. She retained counsel and timely
14 filed her Form I-589 (Application for Asylum and Withholding of Removal) with USCIS on
15 October 10, 2023. She attended her biometrics appointment and obtained an employment
16 authorization document, which is valid until 2029. An immigration judge in Fort Snelling, MN,
17 administratively closed her section 240 proceedings due to the pendency of the Form I-589 with
18 USCIS. Her Form I-589 is currently pending, awaiting an interview.

19 11. In addition, R.D.T.M. is part of the Class covered by the J.O.P. Settlement Agreement
20 because, on or before February 24, 2025, she was (1) determined to be a UC; (2) filed an asylum
21 application that was pending with USCIS; (3) was 18 years of age or older, or you had a parent
22 or legal guardian in the United States who was available to provide care and physical custody;
23 and (4) have not received an adjudication from USCIS on the merits of her asylum application.
24 ICE is barred from removing Class Members with final orders of removal from the United States
25 while they are waiting for USCIS to decide their asylum application under the J.O.P. Settlement
26 Agreement. Furthermore, if USCIS grants a Class Member asylum and the Class Member has a
27 pending removal order, the Government lawyer representing the DHS in the Class Member’s

28 ² A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 removal proceedings will generally not oppose the Class Member's motion to reopen their
2 removal case.

3 12. Despite the fact that R.D.T.M. (1) has pending section 240 proceedings; (2) has a pending
4 Form I-589 with USCIS; and (3) is a class member of the J.O.P. settlement, ICE officers arrested
5 her as she was boarding a flight in San Francisco to go home to her family and community in
6 Minnesota after visiting her boyfriend in the San Francisco's bay area.

7 13. In recent months, ICE has engaged in highly publicized arrests of individuals who
8 presented no flight risk or danger, often with no prior notice that anything regarding their status
9 was amiss or problematic, whisking them away to faraway detention centers without warning.³

10 14. ICE officers arrested R.D.T.M. without any prior notice as she was ready to board a flight
11 back home to Minnesota at the San Francisco International Airport on September 1, 2025, at
12 around 6:00 a.m.. The officers seemed to be waiting for her at the gate. They requested to see her
13 identification documents, to which she complied and showed them her passport and her work
14 permit, which is connected to her pending asylum application and is valid until 2029. The officers
15 asked R.D.T.M. to follow them. R.D.T.M. was concerned because the officers had civilian
16 clothes, and she worried that they could be impostors, but she decided to follow because she
17 wanted to comply with their authority.

18 15. Once they arrived at a deserted place within the airport, the officers handcuffed R.D.T.M.
19 and took her property. They would not tell R.D.T.M. why they were arresting her, and they did
20 not give her or show her a warrant.

21 16. The officers took R.D.T.M. to a car and drove her to an immigration office in San
22 Francisco, where she was held for approximately 30 hours in substandard conditions. She was
23 kept in a room with only a yoga mat to sleep on. She did not have a sweater for most of the time

24 ³ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
25 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
26 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University
27 PhD student detained by federal agents," CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html)
28 [detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html) (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
& Josh Gerstein, *Trump is sais the officers did ntseeking to deport another academic who is legally in the country,*
lawsuit says, Politico (Mar. 19, 2025), available at [https://www.politico.com/news/2025/03/19/trump-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
[deportationgeorgetown-graduate-student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington, Virginia and transferred
to Texas).

1 and became extremely cold. The officers interviewed R.D.T.M. and accused her of having a
2 deportation order from when she was a child. R.D.T.M. was unaware of the deportation order and
3 explained to the officers that her asylum case was pending with immigration and that she was
4 expected to be at her workplace the next morning to start her position as a paraeducator and care
5 for small children in Howard Lake, MN. R.D.T.M. said the officers did not listen to her.

6 17. On September 2, 2025, around 4:00 p.m., after approximately 30 hours of being held in a
7 substandard room at the San Francisco local ICE office, officers handcuffed R.D.T.M.'s hands,
8 waist, and feet. They took her out in a van with other detained individuals who were all male. The
9 van was heading to Fresno, CA, which is five hours away from San Francisco. R.D.T.M. learned
10 that ICE had arrested those detained individuals as they attended their court hearings that
11 morning. R.D.T.M. had nothing to eat and no access to water from the morning of September 2,
12 2025, until she arrived in Fresno at around 9:00 pm that night. When R.D.T.M. asked for water,
13 an officer who was in the van said she had to wait.

14 18. After stopping in Fresno, the officers took R.D.T.M. to the Mesa Verde ICE Processing
15 Center in Bakersfield, CA, which is approximately two hours away from Fresno by car and
16 twenty-eight hours from Lake Howard, MN.

17 19. R.D.T.M.'s arrest and detention have caused her tremendous and ongoing harm. Since
18 being detained, R.D.T.M. reports feeling desperation and despair. She was unable to start her new
19 position as a paraeducator at the Howard Lake-Waverly-Winsted Laker Care Program. She is
20 unable to practice her religion fully. She is away from her friends, family, co-workers, and
21 community, who are also suffering in her absence. Every additional day R.D.T.M. spends in
22 unlawful detention subjects her to further irreparable harm.

23 20. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
24 has the authority to re-arrest a noncitizen and revoke their bond where there has been a change in
25 circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter*
26 *of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation
27 that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197
28 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)

1 (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is
2 well-established that individuals released from incarceration have a liberty interest in their
3 freedom. In turn, to protect that interest, on the particular facts of R.D.T.M., due process requires
4 notice and a hearing in front of a neutral factfinder, *prior to any re-arrest*, at which she is afforded
5 the opportunity to advance her arguments as to why her release should not be revoked.

6 21. That basic principle—that individuals placed at liberty are entitled to process before the
7 government imprisons them—has particular meaning here. ORR, upon a grant of authority from
8 the DHS, has previously found that she need not be incarcerated to prevent flight or to protect the
9 community, and no circumstances have changed that would justify re-arrest. Further, R.D.T.M.
10 is a J.O.P. Class Member waiting for adjudication of her Form I-589. Therefore, at a minimum,
11 to lawfully re-arrest R.D.T.M., the government must first establish, by clear and convincing
12 evidence and before a neutral decision maker, that she is a danger to the community or a flight
13 risk, such that her re-incarceration is necessary. ICE’s re-arrest of R.D.T.M. on September 1,
14 2025, violated these regulations, laws, and due process.

15 22. On September 2, 2025, R.D.T.M.’s counsel hand-delivered a letter demanding R.D.T.M.’s
16 release. On September 7, 2025, the undersigned e-mailed the ICE San Francisco office, also
17 requesting the immediate release of R.D.T.M. To date, neither counsel has received an answer.

18 23. R.D.T.M. respectfully seeks a writ of habeas corpus ordering the government to release
19 her from her ongoing, unlawful detention immediately, and prohibiting her re-arrest without a
20 hearing to contest that re-arrest before a neutral decisionmaker. Because the TVPRA protects
21 R.D.T.M., it is DHS’s obligation to place her in the least restrictive setting. 8 U.S.C. § 1261. In
22 addition, to preserve this Court’s jurisdiction, R.D.T.M. also requests that this Court order the
23 government not to transfer her outside of the District or deport her for the duration of this
24 proceeding.

25 CUSTODY

26 24. R.D.T.M. is currently in the custody of ICE at the Mesa Verde ICE Processing Center in
27 Bakersfield, California. R.D.T.M. is therefore in “‘custody’ of [the DHS] within the meaning of
28 the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

1 **JURISDICTION AND VENUE**

2 25. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
3 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.
4 § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the
5 Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative
6 Procedure Act).

7 26. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.
8 § 1391(b)(2) and (e)(1) because R.D.T.M. is physically detained within this district.

9 **REQUIREMENTS OF 28 U.S.C. § 2243**

10 27. The Court must grant the petition for writ of habeas corpus or issue an order to show
11 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
12 § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three*
13 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis
14 added).

15 28. Courts have long recognized the significance of the habeas statute in protecting
16 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
17 important writ known to the constitutional law of England, affording as it does a *swift* and
18 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
19 400 (1963) (emphasis added).

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

26 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

27 30. For habeas claims, exhaustion of administrative remedies is prudential, not
28

1 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion
2 requirement if “administrative remedies are inadequate or not efficacious, pursuit of
3 administrative remedies would be a futile gesture, irreparable injury will result, or the
4 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
5 (9th Cir. 2004) (citation and quotation marks omitted)). R.D.T.M. asserts that exhaustion should
6 be waived because administrative remedies are (1) futile and (2) her continued detention results
7 in irreparable harm.

8 31. It would be futile for R.D.T.M. to seek a bond hearing from an Immigration Judge. Her
9 request would be summarily denied based on the current interpretation of the BIA’s recent
10 decision in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of YAJURE HURTADO*,
11 29 I&N Dec. 216 (BIA 2025).

12 32. Further, no statutory exhaustion requirements apply to R.D.T.M.’s claim of
13 unlawful custody in violation of her due process rights, and there are no administrative remedies
14 that she needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936,
15 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not
16 have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d
17 1098, 1099 (C.D. Cal. 2000) (same).

18 33. Moreover, because Mr. R.D.T.M.’s case has not been re-calendared, no IJ has jurisdiction
19 to consider a bond. Therefore, R.D.T.M. has exhausted all remedies available.

20 PARTIES

21 34. R.D.T.M. is a nineteen-year-old Honduran citizen who entered the U.S. as a UC in 2023
22 and has remained in the country since.

23 35. The DHS, through a grant of authority to HHS ORR, has deemed R.D.T.M. neither a
24 danger to her community nor a flight risk and released her on her recognizance on January 26,
25 2023. **Exhibit B.** R.D.T.M. has a pending Form I-589 and is a J.O.P. class member.

26 36. R.D.T.M. established a life in Howard Lake, MN. She graduated from the local high
27 school and currently works as a caretaker in the local school as well as a waitress at a local
28

1 restaurant. She is a devout Christian and is very involved in the activities of her church and
2 community. She has maintained a clean criminal record.

3 37. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
4 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
5 responsible for detaining and removing noncitizens according to immigration law and oversees
6 custody determinations. In her official capacity, she is the legal custodian of R.D.T.M..

7 38. Respondent Polly KAISER is the Acting Field Office Director of the San Francisco ICE
8 Field Office. In this capacity, she is responsible for the administration of immigration laws and the
9 execution of immigration enforcement and detention policy within ICE's San Francisco Area of
10 Responsibility, including the detention of Petitioner. Respondent Kaiser maintains an office and
11 regularly conducts business in this district. Respondent Kaiser is sued in her official capacity.

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

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

23 41. Respondent Pam BONDI is the Attorney General of the United States and the most senior
24 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
25 authority to interpret immigration laws and adjudicate removal cases. The Attorney General
26 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
27 administers the immigration courts and the BIA.
28

STATEMENT OF FACTS

42. On July 8, 2025, Acting ICE Director Todd Lyons, issued interim guidance to all ICE employees explaining that the DHS “has revisited its legal position on detention and release authorities” and declared “that section 235 of the INA, rather than section 236, “is the applicable immigration detention authority for all applicants for admission.” This guidance instructed all ICE employees to consider anyone alleged to be inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) - i.e., those who entered the United States without inspection, to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and therefore eligible for release only on parole

43. R.D.T.M. is a nineteen-year-old Honduran citizen who entered the U.S. as a UC in 2023 and has remained in the country since then. She fled Honduras after being left unprotected as a child and becoming a vulnerable target for physical and sexual violence.

44. Upon crossing the border into the United States, R.D.T.M. encountered U.S. immigration officials. She was detained at LSSS New Hope shelter for minors for approximately eleven days. She was released from custody to a sponsor on January 26, 2023. DHS did not require R.D.T.M. to post a bond or wear an ankle monitor.⁴ On February 11, 2023, DHS sent R.D.T.M. a NTA placing her in removal proceedings in section 240 proceedings. The NTA charged R.D.T.M. with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as “an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General.”

45. R.D.T.M. had lived in the United States previously, from when she was around seven years old until she was around ten years old.

46. Following her release, R.D.T.M. went to live with her family in Howard Lake, MN. She established a life in Howard Lake. On June 2, 2024, she graduated from Lake-Waverly-Winsted High School. School staff describe R.D.T.M. as someone who worked “extremely hard” while keeping a positive attitude, being a “ray of sunshine” wherever she went. Her school counselor described her as someone who promoted the values of “integrity, kindness, and perseverance.”

⁴ A true and correct copy of Petitioner’s release documentation is attached hereto as Exhibit 1.

1 After graduating from high school, and before her unlawful detention, R.D.T.M. was working as
2 a child-care professional and was recently promoted to a paraeducator position at Howard Lake-
3 Waverly-Winsted Laker Care Program, caring for young children, and also as a waitress at
4 Maria's Mexican Restaurant in Howard Lake. Her co-workers describe her as the ideal role model
5 for the local community children.

6 47. R.D.T.M. is a member of the St. John's Lutheran Church in
7 Howard Lake. She has volunteered with church activities, and her pastor describes her as a "kind,
8 responsible, and intelligent person, not to mention a devout and earnest Christian." R.D.T.M. has
9 maintained a clean criminal record.⁵

10 48. R.D.T.M. has diligently worked on her immigration case. She retained counsel and timely
11 filed her Form I-589 (Application for Asylum and Withholding of Removal) with USCIS on
12 October 10, 2023. She attended her biometrics appointment and obtained an employment
13 authorization document, which is valid until 2029. An immigration judge in Fort Snelling, MN,
14 administratively closed her section 240 proceedings due to the pendency of the Form I-589 with
15 USCIS. Her Form I-589 is currently pending, awaiting an interview in the Chicago Asylum
16 Office.

17 49. Despite the fact that R.D.T.M. (1) has pending section 240 proceedings; (2) has a pending
18 Form I-589 with USCIS; and, (3) is a class member of the JOP settlement, ICE officers arrested
19 her as she was boarding a flight in San Francisco to go home to her family and community in
20 Minnesota after visiting her boyfriend in the San Francisco bay area on September 1, 2025, at
21 around 6:00 a.m.

22 50. In recent months, ICE has engaged in highly publicized arrests of individuals who
23 presented no flight risk or danger, often with no prior notice that anything regarding their status
24 was amiss or problematic, whisking them away to faraway detention centers without warning.⁶

25 ⁵ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

26 ⁶ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
27 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
28 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University
PhD student detained by federal agents," CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-
detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html) (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
& Josh Gerstein, *Trump is sais the officers did ntseeking to deport another academic who is legally in the country.*

1 51. The officers seemed to be waiting for R.D.T.M. at the gate. They requested to see her
2 identification documents, to which she complied and showed them her passport and her work
3 permit, which is connected to her pending asylum application and is valid until 2029. The officers
4 asked R.D.T.M. to follow them. R.D.T.M. was concerned because the officers had civilian
5 clothes, and she worried that they could be impostors, but she decided to follow because she
6 wanted to comply with their authority.

7 52. Once they arrived at a deserted place within the airport, the officers handcuffed R.D.T.M.
8 and took her property. They would not tell R.D.T.M. why they were arresting her, and they did
9 not give her or show her a warrant.

10 53. The officers took R.D.T.M. to a car and drove her to an immigration office in San
11 Francisco, where she was held for approximately 30 hours in substandard conditions. She was
12 kept in a room with only a yoga mat to sleep on. She did not have a sweater for most of the time
13 and became extremely cold. The officers interviewed R.D.T.M. and accused her of having a
14 deportation order from when she was a child. R.D.T.M. was unaware of the deportation order and
15 explained to the officers that her asylum case was pending with immigration and that she was
16 expected to be at her workplace the next morning to start her position as a paraeducator and care
17 for small children in Howard Lake, MN. R.D.T.M. said the officers did not listen to her.

18 54. On September 2, 2025, around 4:00 p.m., after approximately 30 hours of being held at
19 the San Francisco local ICE office, officers handcuffed R.D.T.M.'s hands, waist, and feet. They
20 took her out in a van heading to Fresno, CA, with other detained individuals who were all male.
21 R.D.T.M. learned that ICE had arrested those detained individuals as they attended their court
22 hearings that morning. R.D.T.M. had nothing to eat and no access to water from the morning of
23 September 2, 2025, until she arrived in Fresno at around 9:00 pm that night. When R.D.T.M.
24 asked for water, an officer who was in the van said she had to wait.

25 55. After stopping in Fresno, the officers took R.D.T.M. to the Mesa Verde ICE Processing
26 Center in Bakersfield, CA.

27 *lawsuit says*, Politico (Mar. 19, 2025), available at [https://www.politico.com/news/2025/03/19/trump-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
28 [deportationgeorgetown-graduate-student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

1 56. R.D.T.M.'s arrest and detention have caused her tremendous and ongoing harm. Since
2 being detained, R.D.T.M. reports feeling desperation and despair. She was unable to start her new
3 position as a paraeducator at the Howard Lake-Waverly-Winsted Laker Care Program. She is
4 unable to practice her religion fully. She is away from her friends, family, co-workers, and
5 community, who are also suffering in her absence. Every additional day R.D.T.M. spends in
6 unlawful detention subjects her to further irreparable harm.

7 57. R.D.T.M. is part of the Class covered by the J.O.P. Settlement. This case has substantial
8 factual and legal support to be granted, resulting in R.D.T.M.'s release from custody, and
9 enjoining DHS from detaining R.D.T.M. pending a hearing before a neutral adjudicator, to
10 substantiate a material change in circumstances indicating that R.D.T.M. is either a flight risk or
11 a danger to the community.

12 58. Intervention from this Court is therefore required to ensure that R.D.T.M. is released from
13 her current custody based on her unlawful arrest, returned to her home in Minnesota, where ICE
14 can then provide her with a hearing before determining to re-arrest her pursuant to the Due Process
15 Clause of the Fifth Amendment.

16 LEGAL BACKGROUND

17 **Statutory Framework**

18 59. Under federal law, a UC is defined as a child who “(a) has no lawful immigration status
19 in the United States; (b) has not attained 18 years of age; and (c) with respect to whom—(i) there
20 is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the
21 United States is available to provide care and physical custody.” Current laws governing the
22 treatment of UCs include the following: (a) the Flores Settlement Agreement (FSA), (b) the
23 HSA, (c) the TVPRA, (d) the J.O.P. Settlement, and (e) the Due Process Clause of the Fifth
24 Amendment. Because R.D.T.M. entered the United States when she was seventeen,
25 unaccompanied by her parents or legal guardians, DHS deemed her a UC and transferred her
26 custody to ORR.

27 ***A. The Flores Settlement Agreement (FSA)***

28

1 60. In 1997, the United States government entered into the FSA, which, once executed, set
2 forth the national policy governing the detention, release, and treatment of minors in the custody
3 of the U.S. government. When the FSA was established, the Immigration and Naturalization
4 Service (“INS”) administered these functions relating to the care and custody of UCs; however,
5 Congress passed the HSA in 2002, which abolished the INS and transferred these functions to
6 ORR, a sub-department of the HHS. The FSA establishes minimum standards that must be
7 followed by ORR related to the detention, housing, and release of UCs and “oblige[s] the
8 government to pursue a ‘general policy favoring release’ of such juveniles.” Section 462 of the
9 HSA extends the key terms of the FSA to all unaccompanied immigrant children. To wit, the FSA
10 states the following: “Whenever the [U.S. Government] takes a minor into custody, it shall
11 expeditiously process the minor and shall provide the minor with a notice of rights, including the
12 right to a bond redetermination hearing....Following arrest, the [U.S. Government] shall hold
13 minors in facilities that are safe and sanitary and that are consistent with the [U.S. Government’s]
14 concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks,
15 drinking water and food as appropriate, medical assistance if the minor is in need of emergency
16 services, adequate temperature control and ventilation, adequate supervision to protect the minors
17 from others, and contact with family members who were arrested with the minor” The FSA
18 requires that ORR “release a minor from its custody without unnecessary delay, in the following
19 order of preference, to: 1. a parent; 2. a legal guardian; 3. an adult relative (brother, sister, aunt,
20 uncle, or grandparent); 4. an adult individual or entity designated by the parent or legal guardian
21 as capable and willing to care for the minor’s well-being in (i) a declaration signed under penalty
22 of perjury before an immigration or consular officer or (ii) such other document(s) that
23 establish(es) to the satisfaction of the INS, in its discretion, the affiant’s paternity or guardianship;
24 5. a licensed program willing to accept legal custody; or 6. an adult individual or entity seeking
25 custody, in the discretion of the INS, when it appears that there is no other likely alternative to
26 long term detention and family reunification does not appear to be a reasonable possibility.” Before
27
28

1 a minor is released from government custody, the custodian seeking custody must execute an
2 Affidavit of Support (Form I-134), under which the custodian agrees, among other things, to
3 provide for the child and ensure that the minor is present at all future immigration proceedings.

4 61. ORR may only retain custody of a UC for longer periods of time if the ORR determines
5 that the UC meets one of the following criteria: a. with certain exceptions, that the UC has been
6 charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency
7 proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; b. that the
8 UC has committed, or has made credible threats to commit, a violent or malicious act (whether
9 directed at himself or others) while in the custody of the U.S. government; c. that the UC has
10 engaged in conduct that is disruptive of the program in which he or she has been placed and
11 removal is necessary to ensure the welfare of other minors; d. that the UC is an escape-risk; or e.
12 that the UC must be held in a secure facility for his or her own safety. The FSA and the TVPRA
13 each require that the UC be promptly placed in the “least restrictive setting that is in the best
14 interest of the child” and, in order to permit judicial review of the placement decision made, a UC
15 has a right to be notified of the reasons for their placement in a more restrictive setting. Further,
16 the UC has a right to a bond redetermination hearing before an immigration judge in every case,
17 unless the UC refuses such a hearing. Additionally, suppose a UC disagrees with the type of facility
18 they are placed in or alleges that the program does not comply with legal standards. In that case,
19 the UC may assert such claims in United States District Court.

21 62. The FSA also includes restrictions on how a UC can be transferred from one placement
22 to another, including the requirement that a UC’s counsel be provided advance notice of the
23 transfer, except in unusual cases. Under its terms, the FSA was to remain in effect only until 45
24 days after the U.S. government adopted regulations that permanently implemented its substantive
25 terms. To date, however, the government has not met that requirement. As a result, the Central
26 District of California continues to maintain jurisdiction over the FDA, which continues to govern
27 the agencies that carry out the functions of the former INS.
28

1 **B. *The Trafficking Victims Protection Reauthorization Act (“TVPRA”)***

2 63. While the TVPRA codifies some - but not all- of the substantive terms in the FSA, the
3 Ninth Circuit Court of Appeals has held that the TVPRA did not completely supersede the FSA,
4 and the FSA still remains in effect. Thus, the TVPRA, which was signed into law on December
5 23, 2008, preserves the FSA.

6 64. The TVPRA requires that any UC in the custody of HHS be “promptly placed in the least
7 restrictive setting that is in the best interest of the child,” subject to considerations of danger to
8 self, danger to community, and risk of flight. The TVPRA also requires that: “a child shall not be
9 placed in a secure facility absent a determination that the child poses a danger to self or others or
10 has been charged with having committed a criminal offense,” and that such placement decisions
11 be reviewed at a minimum, on a monthly basis, to determine if such placement remains warranted.
12 UCs who have been determined to pose a danger to themselves or others or have been charged
13 with crimes must be placed in a secure facility.

14 65. If a UC reaches 18 years of age and is transferred to the custody of the Secretary of
15 Homeland Security, the Secretary shall consider placement in the least restrictive setting available
16 after taking into account the UC’s danger to self, danger to the community, and risk of flight. Such
17 UCs shall be eligible to participate in alternative to detention programs, utilizing a continuum of
18 alternatives based on the alien’s need for supervision, which may include placement of the alien
19 with an individual or an organizational sponsor, or in a supervised group home.” *Lopez v. Sessions*,
20 No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *5 (S.D.N.Y. June 12, 2018), citing the TVPRA,
21 8 U.S.C. § 1232(c).

22 66. R.D.T.M. was thus placed in the “least restrictive setting,” on January 26, 2023, subject to
23 considerations of danger to self, danger to community, and risk of flight.
24

25 **C. *The J.O.P. Settlement***

26 67. The “JOP settlement”, held, *inter alia*, that the USCIS has jurisdiction over asylum
27 applications of eligible class members, and that ICE may not remove class members, even those
28

1 with a final order of removal, while their USCIS asylum application is pending. Furthermore, if
2 USCIS grants a Class Member asylum and the Class Member has a pending removal order, the
3 Government lawyer representing the DHS in the Class Member's removal proceedings will
4 generally not oppose the Class Member's motion to reopen their removal case.

5 68. R.D.T.M. is part of the Class covered by the J.O.P. Settlement Agreement because, on or
6 before February 24, 2025, she was (1) determined to be a UC; (2) filed an asylum application that
7 was pending with USCIS; (3) was 18 years of age or older, or you had a parent or legal guardian
8 in the United States who was available to provide care and physical custody; and (4) have not
9 received an adjudication from USCIS on the merits of her asylum application.

10 ***D. Section 240 Proceedings***

11 69. R.D.T.M.'s removal proceedings before a Fort Snelling Immigration Judge are section
12 240 proceedings. Section 240 proceedings provide important statutory protections, including
13 hearings before an Immigration Judge. See 8 U.S.C. § 1229a(a)(1), (a)(4).

14 70. R.D.T.M.'s removal proceedings are currently administratively closed pending
15 adjudication of her Form I-589, presently pending with the USCIS Chicago Asylum Office.

16 ***E. The Administrative Procedures Act ("APA")***

17 71. Under the APA, a "final agency action for which there is no other adequate remedy in a
18 court [is] subject to judicial review." 5 U.S.C. § 704. The reviewing court "shall ... hold unlawful
19 and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an
20 abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial
21 evidence." 5 U.S.C. §§ 706(2)(A), (E).

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

23 72. In R.D.T.M.'s particular circumstances, the Due Process Clause of the
24 Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-
25 deprivation hearing before a neutral decision maker to determine whether circumstances have
26 materially changed since her release from custody in January of 2023, such that detention would
27 now be warranted on the basis that he is a danger or a flight risk by clear and convincing evidence.

28 73. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's

1 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
2 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
3 revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at
4 640, the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.
5 There, the BIA held that “where a previous bond determination has been made by an immigration
6 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
7 DHS “requires a showing of changed circumstances both where the prior bond determination was
8 made by an immigration judge *and* where the previous release decision was made by a DHS
9 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed
10 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
11 circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent
12 changed circumstances ... ICE cannot redetain Panosyan.”).

13 74. ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
14 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
15 Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second Supp.
16 Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may
17 re-arrest a noncitizen who had been previously released only after a material change in
18 circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

19 75. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
20 also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981
21 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by
22 the requirements of due process”). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due
23 Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*,
24 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner’s release from custody in January
25 2024 and ties to his community provide him with a protected liberty interest. *See Ortega v.*
26 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019)

27 76. Federal district courts in California have repeatedly recognized that the demands of due
28 process and the limitations on DHS’s authority to revoke a noncitizen’s release from custody set

1 out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
2 noncitizen on bond, like R.D.T.M before ICE re-detains her. See, e.g., *Meza v. Bonnar*, 2018 WL
3 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
4 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
5 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
6 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
7 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing
8 before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
9 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff’s
10 ICE interview when he had been on bond for more than five years). See also *Doe v. Becerra*, No.
11 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the
12 Constitution requires a hearing before any re-arrest).

13 **R.D.T.M’s Protected Liberty Interest in Her Conditional Release**

14 77. R.D.T.M’s liberty from immigration custody is protected by the Due
15 Process Clause: “Freedom from imprisonment—from government custody, detention, or other
16 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
17 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

18 78. Since January of 2023, R.D.T.M exercised that freedom under ICE’s order releasing her
19 from custody. See **Exhibit B**. As she was released from custody, she retains a weighty liberty
20 interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-
21 incarceration. See *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S.
22 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable
23 expectation that R.D.T.M would be permitted to study, live and work in the United States without
24 being subject to arbitrary arrest and removal.

25 79. This reasonable expectation creates constitutionally-protected liberty and property
26 interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices
27 may establish a legitimate claim of entitlement to a constitutionally-protected interest); see also
28 *Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S.

1 Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants). These
2 benefits are entitled to constitutional protections no matter how they may be characterized by
3 Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he
4 identification of property interests under constitutional law turns on the substance of the interest
5 recognized, not the name given that interest by the state or other independent source.”) (internal
6 quotations omitted).

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

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

1 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
2 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
3 and *Morrissey*, 408 U.S. at 482).

4 82. In fact, it is well-established that an individual maintains a protectable liberty interest even
5 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
6 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
7 considerations support the notion that an inmate released on parole by mistake, because he was
8 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
9 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
10 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
11 (internal quotation marks and citation omitted).

12 83. Here, when this Court “compar[es] the specific release in [R.D.T.M.’s case], with the
13 liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly similar.
14 *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, R.D.T.M.’s release “enables [her] to
15 do a wide range of things open to persons” who have never been in custody or convicted of any
16 crime, including to live at home, work, care for his children, including his U.S. citizen son for
17 whom he is the sole caretaker, and “be with family and friends and to form the other enduring
18 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

19 **R.D.T.M.’s Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of**
20 **Release from Custody**

21 84. R.D.T.M. asserts that, here, (1) where her detention would be civil; (2) where she has been
22 at liberty for over 30 months; (3) where no change in circumstances exist that would justify her
23 lawful detention; and (4) where the only circumstance was ICE’s move to arrest as many people
24 as possible because of the new administration, due process mandates that she be released from
25 his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any
26 re-arrest or revocation of her custody release.

27 85. “Adequate, or due, process depends upon the nature of the interest affected. The more
28 important the interest and the greater the effect of its impairment, the greater the procedural

1 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
2 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
3 “balance [R.D.T.M.’s] liberty interest against the [government’s] interest in the efficient
4 administration of” its immigration laws in order to determine what process she is owed to ensure
5 that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth
6 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
7 “first, the private interest that will be affected by the official action; second, the risk of an
8 erroneous deprivation of such interest through the procedures used, and the probative value, if
9 any, of additional or substitute procedural safeguards; and finally the government’s interest,
10 including the function involved and the fiscal and administrative burdens that the additional or
11 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
12 *Eldridge*, 424 U.S. 319, 335 (1976)).

13 86. The Supreme Court has held that the Constitution requires some kind of a hearing
14 *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127
15 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
16 only remedies the State could be expected to provide” can post-deprivation process satisfy the
17 requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the
18 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
19 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally
20 to do the impossible by providing predeprivation process,” can the government avoid providing
21 pre-deprivation process. *Id.*

22 87. Because, in this case, ICE is required to release R.D.T.M. from their unlawful custody and
23 provide R.D.T.M. with notice and a hearing *prior* to any re-incarceration and revocation of her
24 prior release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d
25 at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982);
26 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary
27 civil commitment proceedings may not constitutionally be held in jail pending the determination
28 as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily

1 in favor of [R.D.T.M.’s] liberty” and requires a pre-deprivation hearing before a neutral
2 adjudicator.

3 **R.D.T.M.’s Private Interest in Her Liberty is Profound**

4 88. Under *Morrissey* and its progeny, individuals conditionally released from serving
5 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
6 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
7 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
8 him to constitutional due process before she is re-incarcerated—apply with even greater force to
9 individuals like R.D.T.M., who have been released pending civil removal proceedings, rather than
10 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
11 conviction. Parolees and probationers have a diminished liberty interest given their underlying
12 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
13 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
14 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
15 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
16 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, R.D.T.M. retains a truly weighty liberty interest
17 even though she is under conditional release.

18 89. What is at stake in this case for R.D.T.M. is one of the most profound individual interests
19 recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing
20 him from custody and to take away—without a lawful basis—her physical freedom, i.e., her
21 “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d
22 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has
23 always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
24 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—
25 from government custody, detention, or other forms of physical restraint—lies at the heart of the
26 liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

27 90. Thus, it is clear that there is a profound private interest at stake in this case, which must
28

1 be weighed heavily when determining what process she is owed under the Constitution. *See*
2 *Mathews*, 424 U.S. at 334-35.

3
4 **The Government's Interest in Re-Incarcerating R.D.T.M. Without a Hearing is Low and**
5 **the Burden on the Government to Refrain from Re-Arresting Her Unless and Until She is**
6 **Provided a Hearing That Comports with Due Process is Minimal**

7 91. The government's interest in detaining R.D.T.M. without a due process hearing is low,
8 and when weighed against R.D.T.M.'s significant private interest in her liberty, the scale tips
9 sharply in favor of enjoining Respondents to release R.D.T.M. from her unlawful custody and
10 refrain from re-arresting R.D.T.M. unless and until the government demonstrates by clear and
11 convincing evidence that she is a flight risk or a danger to the community. It becomes abundantly
12 clear that the *Mathews* test favors R.D.T.M. when the Court considers that the process she seeks
13 - notice and a hearing regarding whether she has violated any conditions of her release-, and, if
14 so, providing R.D.T.M. with a hearing before this Court (or a neutral decisionmaker) to determine
15 whether there is clear and convincing evidence that R.D.T.M. is a flight risk or danger to the
16 community would impose only a *de minimis* burden on the government, because the government
17 routinely provides this hearing to individuals like R.D.T.M..

18 92. As immigration detention is civil, it can have no punitive purpose. The government's only
19 interest in holding an individual in immigration detention can be to prevent danger to the
20 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
21 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
22 for detaining R.D.T.M. R.D.T.M. has lived at liberty, complying with the conditions of her
23 release, since January of 2023.

24 93. ORR determined R.D.T.M. not to be a danger to the community or a flight risk in January
25 of 2023 and R.D.T.M. has done nothing to undermine that determination. *See Morrissey*, 408 U.S.
26 at 482 ("It is not sophistic to attach greater importance to a person's justifiable reliance in
27 maintaining his conditional freedom so long as he abides by the conditions on his release, than to
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1 his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut*
2 *Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

3 94. It is difficult to see how the government’s interest in ensuring her presence at the moment
4 of removal has materially changed since she was released in January of 2023, when she has
5 complied with all conditions of release. The government’s interest in detaining R.D.T.M at this
6 time is therefore low. That ICE has a new policy to make a minimum number of arrests each day
7 under the new administration does not constitute a material change in circumstances or increase
8 the government’s interest in detaining her.⁷

9 95. Moreover, the “fiscal and administrative burdens” that his immediate release and a lawful
10 pre-detention hearing would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-
11 35. R.D.T.M. does not seek a unique or expensive form of process, but rather a routine hearing
12 regarding whether she should be re-incarcerated.

13 96. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
14 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
15 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. R.D.T.M. is waiting for her asylum interview
16 to be scheduled by the USCIS Chicago Asylum Office, which retains sole jurisdiction over her
17 petition. Further, R.D.T.M. is guaranteed a stay of removal during the pendency of her
18 proceedings according to the J.O.P. Settlement. ICE’s unlawful action of placing her in custody
19 is more of a financial burden than releasing her and providing a pre-custody hearing before any
20 future re-arrest occurs.

21 97. In the alternative, providing R.D.T.M. with a hearing before this Court (or a neutral
22 decisionmaker) regarding release from custody is a routine procedure that the government has
23 provided to those in immigration jails on a daily basis. At that hearing, the Court would have the

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25 ⁷ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-
and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White
House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested
more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’
reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

1 opportunity to determine whether circumstances have changed sufficiently to justify her re-arrest.
2 But there is no justifiable reason to re-incarcerate R.D.T.M. prior to such a hearing taking place.
3 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest
4 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
5 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
6 revoking parole without some informal procedural guarantees.” *Morrissey*, 408 U.S. at 483.

7 98. Releasing R.D.T.M. from unlawful custody and enjoining her re-arrest until ICE (1)
8 moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by
9 clear and convincing evidence that R.D.T.M. is a flight risk or danger to the community is far *less*
10 costly and burdensome for the government than keeping her detained. *Hernandez*, 872 F.3d at 996.

11 **Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**
12 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant**
13 **Hearing Where ICE Carries the Burden Would Decrease That Risk**

14 99. Releasing R.D.T.M. from unlawful custody and providing R.D.T.M. a pre-deprivation
15 hearing would decrease the risk of her being erroneously deprived of her liberty. Before R.D.T.M.
16 can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at
17 which the government is held to show that there has been sufficiently changed circumstances such
18 that ORR’s January of 2023 release from custody determination should be altered or revoked
19 because clear and convincing evidence exists to establish that R.D.T.M. is a danger to the
20 community or a flight risk.

21 100. On September 1, 2025, R.D.T.M. did not receive this protection. Instead, she was
22 detained by ICE, without notice, and there have been no material changes in his circumstances.

23 101. By contrast, the procedure R.D.T.M. seeks - a hearing in front of a neutral adjudicator
24 at which the government must prove by clear and convincing evidence that circumstances have
25 changed to justify his detention *before* any re-arrest—is much more likely to produce accurate
26 determinations regarding factual disputes, such as whether a certain occurrence constitutes a
27 “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989)
28 (when “delicate judgments depending on credibility of witnesses and assessment of conditions

1 not subject to measurement” are at issue, the “risk of error is considerable when just
2 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
3 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
4 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
5 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
6 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
7 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

8 102. Due process also requires consideration of alternatives to detention at any custody
9 determination hearing that may occur. The primary purpose of immigration detention is to ensure
10 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
11 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
12 of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
13 must be considered in determining whether R.D.T.M.’s re-incarceration is warranted.

14 **R.D.T.M.’s arrest violated the TVPRA and the APA**

15 103. R.D.T.M. qualifies for additional procedural safeguards granted by Congress under the
16 amended TVPRA, which defines a specific class of immigrants who entered as minors and have
17 since turned 18. Federal law, specifically 8 U.S.C. § 1232(c)(2)(B), dictates that these individuals
18 “shall” be given consideration for the “least restrictive” setting and be eligible for alternatives to
19 detention programs. The use of “shall” imposes a nondiscretionary duty, making this
20 consideration a requirement.
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23 104. Further, R.D.T.M.’ arrest and re-detention by ICE is a reviewable “final agency action”
24 which violated the APA, because DHS neglected its statutory obligation to “consider placement
25 in the least restrictive setting available” after evaluating the R.D.T.M.’s flight risk and potential
26 danger to herself or the community. 8 U.S.C. § 1261. This failure to perform a required action is
27 grounds for review under the APA, as noted in *Norton v. S. Utah Wilderness All.*, 542 U.S. 55,
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1 64 (2004) and *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *7 (S.D.N.Y.
2 June 12, 2018)

3 **FIRST CAUSE OF ACTION**

4 **Procedural Due Process**

5 **U.S. Const. amend. V**

6 105. R.D.T.M. re-alleges and incorporates herein by reference, as is set forth fully
7 herein, the allegations in all the preceding paragraphs.

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

10 107. R.D.T.M. has a vested liberty interest in her lawful conditional release. Due
11 Process does not permit the government to strip her of that liberty without a hearing before this
12 Court. *See Morrissey*, 408 U.S. at 487-488.

13 108. The Court must therefore order that ICE release R.D.T.M. from her current
14 unlawful custody.

15 109. Prior to any re-arrest, the government must provide her with a hearing before a
16 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
17 clear and convincing evidence demonstrates, taking into consideration the least restrictive setting
18 available, that R.D.T.M. is a danger to the community or a flight risk, such that her re-
19 incarceration is warranted. During any custody determination hearing that occurs, this Court or,
20 in the alternative, a neutral adjudicator must consider the least restrictive setting available when
21 determining whether R.D.T.M.’s re-incarceration is warranted.

22 **SECOND CAUSE OF ACTION**

23 **Substantive Due Process**

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

25 110. R.D.T.M. re-alleges and incorporates herein by reference, as is set
26 forth fully herein, the allegations in all the preceding paragraphs.

1 111. The Due Process Clause of the Fifth Amendment forbids the government from
2 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
3 amend. V.

4 112. R.D.T.M. has a vested liberty interest in her conditional release. Due Process does
5 not permit the government to strip her of that liberty without it being tethered to one of the two
6 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
7 community from danger. Since January 2023, R.D.T.M. has attended all of her immigration
8 appointments, thus demonstrating that she is neither a flight risk nor a danger. Re-arresting her
9 now would be punitive and violate her constitutional right to be free from the unjustified
10 deprivation of her liberty.

11 113. For these reasons, R.D.T.M.'s continued unlawful custody and any
12 subsequent re-arrest without first being provided a pre-deprivation hearing would violate the
13 Constitution.

14 114. The Court must therefore order that she be released from custody.

15 115. The Court must order the government to not re-arrest her in any subsequent action
16 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
17 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into
18 consideration the least restrictive setting available, that R.D.T.M. is a danger to the community
19 or a flight risk, such that her re-incarceration is warranted. During any custody determination
20 hearing that occurs, this Court or, in the alternative, a neutral adjudicator must consider the least
21 restrictive setting available when determining whether R.D.T.M.'s re-incarceration is warranted.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, R.D.T.M. prays that this Court grant the following relief:

- 25 (1) Assume jurisdiction over this matter;
- 26 (2) Declare that ICE's September 1, 2025, apprehension and detention of
27 R.D.T.M. was an unlawful exercise of authority because the ICE officer
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1 provided no reason that she presents a danger to the community or is flight risk
2 and failed to consider the least restrictive setting available;

3 (3) Order ICE to immediately release R.D.T.M. from her unlawful detention;

4 (4) Enjoin re-arresting R.D.T.M. unless and until a hearing can be held before a
5 neutral adjudicator to determine whether her re-incarceration would be lawful
6 because the government has shown that he is a danger or a flight risk by clear
7 and convincing evidence;

8 (5) Declare that R.D.T.M. cannot be re-arrested unless and until she is afforded a
9 hearing on the question of whether his re-incarceration would be lawful—i.e.,
10 whether the government has demonstrated to a neutral adjudicator that she is
11 a danger or a flight risk by clear and convincing evidence;

12 (6) Award reasonable costs and attorney fees; and

13 (7) Grant such further relief as the Court deems just and proper.
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15 Dated: September 7, 2025

Respectfully submitted,

16 /s/ Natalia Santanna
17 Natalia Santanna
18 Attorney for R.D.T.M.
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