

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

T.Y.S.,

Petitioner-Plaintiff,

v.

JUDITH ALMODOVAR, in her official capacity
as Acting Field Office Director of New York,
Immigration and Customs Enforcement;

TODD LYONS, in his official capacity as
Acting Director, U.S. Immigration and
Customs Enforcement,

KRISTI NOEM, in her official capacity as
Secretary of the United States Department of
Homeland Security;

PAMELA BONDI, in her official capacity as
Attorney General of the U.S.;

SIRCE E. OWEN, in her official capacity as
Acting Director of the Executive Office for
Immigration Review; and

PAUL ARTETA in his official capacity as the
Sheriff of Orange County and the Director of
Orange County Correctional Facility.

Respondents-Defendants.

Case No. 1:25-cv-8267

**VERIFIED
PETITION FOR
WRIT OF HABEAS
CORPUS AND
COMPLAINT**

INTRODUCTION


1. This case concerns the illegal arrest and the illegal subsequent detention of Petitioner-Plaintiff (“Petitioner”) T.Y.S., a 32-year-old father of three and national of Honduras.¹


¹ Accompanying this petition is a motion to proceed by initials and to seal the last name of T.Y.S.’s family members.

2. T.Y.S. was previously detained by Immigration and Customs Enforcement (“ICE”) from June 12, 2019 until May 10, 2021, when he was released after a bond hearing by an Immigration Judge (“IJ”), which was held by order of a district court in a prior Petition for a Writ of Habeas Corpus.


3. Four years after his release on bond, the government arrested T.Y.S. again in May 2025, although no new facts have arisen that would justify his re-detention.

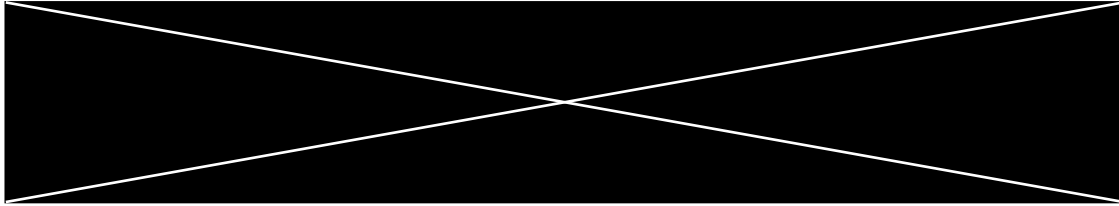
4. T.Y.S.’s arrest and re-detention are wholly unjustified and unrelated to any individualized consideration of his circumstances. T.Y.S. is not a danger to the community. Since his release from ICE custody on May 10, 2021, T.Y.S. has not been arrested, charged, or convicted of any criminal conduct. T.Y.S. is not a flight risk. Since his release, he has continued to work steadfastly on his immigration case and pursue legal relief while residing with his partner and children. T.Y.S. has a Petition for Review pending before the U.S. Court of Appeals for the Second Circuit regarding his applications for Asylum, Withholding of Removal and protection under the Convention Against Torture.


5. T.Y.S.’s unlawful ICE arrest and ongoing detention are causing him immense harm. T.Y.S. suffers from Post-Traumatic Stress Disorder and Major Depressive Disorder resulting from trauma related to his family’s persecution in Honduras, including the 

 His prior twenty-three-month long detention in ICE custody severely

exacerbated the symptoms of his mental health conditions.

6. T.Y.S. is terrified that he will be sent back to Honduras, where he was the victim of targeted narco-trafficking violence because 



The narco-trafficking family subsequently threatened T.Y.S.'s life. Since T.Y.S. has come to the United States, 



7. Due process requires the government to provide noncitizens with notice and a hearing prior to re-detention. Any re-detention without prior notice, a showing of changed circumstances, and a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.

8. T.Y.S. respectfully requests this Court order his immediate release, because his re-detention was unlawful, or in the alternative order an immediate hearing where the Respondents must establish changed circumstances that would justify cancelling a bond that an Immigration Judge had previously set, and adduce clear and convincing evidence that T.Y.S. is a flight risk or a danger such that he must be separated from his family and community.

9. Each day T.Y.S. spends in unlawful detention causes him further irreparable harm. Immediate relief and an Order to Show Cause for a return

within 3 days is necessary to ensure that T.Y.S. is not subjected to continued violations of his substantive and procedural rights.

JURISDICTION AND VENUE

10. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

11. The Court also has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus), and Article I, § 9, cl. 2 of the United States Constitution (“The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.”).

12. Venue is proper in the Southern District of New York because T.Y.S. is detained at Orange County Correctional Facility in Goshen, New York, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been

referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

15. Petitioner T.Y.S. is a national of Honduras and prior to his detention resided with his family in Newburgh, New York. T.Y.S. is currently detained at Orange County Correctional Facility in Goshen, New York. He is in the custody, and under the direct control, of Respondents and their agents.

16. Respondent JUDITH ALMODOVAR is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. Respondent Almodovar’s address is New York Immigration and Customs Enforcement Field Office, 26 Federal Plaza, New York, New York 10278. Respondent Almodovar is a legal custodian of T.Y.S.

17. Respondent TODD LYONS is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900,

Washington, DC 20536-5900. As the Acting Director of ICE, Respondent Lyons is a legal custodian of T.Y.S.

18. Respondent KRISTI NOEM is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security (“DHS”). In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the Immigration and Nationality Act, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove Petitioner; and as such is a custodian of Petitioner. Respondent Noem’s address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485. Secretary Noem is T.Y.S.’s legal custodian.

19. Respondent PAMELA BONDI is named in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review (“EOIR”), Attorney General Bondi is responsible for administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). Respondent Bondi’s address is U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001. She is legally responsible for the pursuit of T.Y.S.’s detention and removal.

20. Respondent SIRCE E. OWEN is named in her official capacity as

Acting Director of the Executive Office for Immigration Review. As the Acting Director of EOIR, Respondent Owens is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). Respondent Owen's address is Executive Office for Immigration Review, 5107 Leesburg Pike, Falls Church, VA 22041. She is legally responsible for the pursuit of T.Y.S.'s detention and removal.

21. Respondent PAUL ARTETA is named in his official capacity as the Sheriff of Orange County and the Director of Orange County Correction Facility, where Petitioner is currently detained. In this capacity, he is responsible for T.Y.S.'s detention. Respondent Arteta's address is 110 Wells Farm Rd, Goshen, NY 10924. Respondent Arteta is a legal custodian of T.Y.S.

STATEMENT OF FACTS

22. T.Y.S. was born on [REDACTED] in Catacamas, Honduras. He has three children, including two sons who are United States citizens. See Declaration of T.Y.S., Exhibit A at ¶¶25, 37 (Decl. T.Y.S.); Declaration of Steven Muñoz, Esq., Exhibit B at ¶4, (Decl. Muñoz).

23. T.Y.S. entered the United States in 2013 after enduring violence, persecution, and discrimination in Honduras. A powerful narco-trafficking family targeted [REDACTED]

[REDACTED] Decl. Muñoz at ¶3; Decl. T.Y.S.

¶¶7-10. [REDACTED]

[REDACTED]

Id.

24. [REDACTED]

[REDACTED]

25. In Honduras, T.Y.S. also experienced discrimination because of his mother's mental health status. T.Y.S. was hit and bullied by his peers and neighbors growing up because his mother received medical treatment for her mental health. Decl. T.Y.S. at ¶¶11, 13.

26. T.Y.S. fled Honduras in 2013 to escape further attempts on his life at the hands of the narco-trafficking family. *Id.*

27. Since T.Y.S. has come to the United States, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at ¶6.


28. Since coming to the United States more than ten years ago, T.Y.S. has made New York his home. *Id.* at ¶¶12, 24-25.

29. T.Y.S. was arrested by the police twice in 2016 and once in 2017. He served his period of incarceration, 60 days in 2016 and 364 days in 2017.

See Decl. Muñoz at ¶¶5-6. Since that time, T.Y.S. has attended therapy and received mediation to address underlying mental health concerns related to his long history of trauma. Decl. T.Y.S. at ¶¶17-18, 23, 26.

30. On June 12, 2019, T.Y.S. was detained by ICE for the first time. On that same day, DHS charged T.Y.S. as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as an individual present in the United States without being admitted or paroled. Decl. Muñoz at ¶8.

31. On August 15, 2019, T.Y.S. filed a Form I-589 application for Asylum, Withholding of Removal and protection under the Convention Against Torture, and a request for bond. *Id.* at ¶10.

32. On September 3, 2019, T.Y.S. was diagnosed with Post-Traumatic Stress Disorder and Major Depressive Disorder stemming from the trauma of  *Id.* at ¶11; Decl. T.Y.S. at ¶15.

33. On October 8, 2019, T.Y.S. appeared at his Individual Hearing. On October 25, 2019, the Immigration Judge denied T.Y.S.'s I-589 application. Decl. Muñoz at ¶16.

34. On November 15, 2019, T.Y.S. appealed the Immigration Judge's decision on his I-589 application. While his appeal was pending, T.Y.S. filed a Motion to Remand Proceedings based on newly available evidence. *Id.* at ¶17.

35. On September 12, 2019, the IJ denied T.Y.S.'s application for bond, placing the burden of proof on T.Y.S. to prove he was not a danger to the

community or a flight risk. On December 12, 2019, T.Y.S. appealed the Immigration Judge's denial of his bond request. The Board of Immigration Appeals ("BIA") affirmed the bond denial. *Id.* at ¶14-15.

36. On February 11, 2021, the BIA issued a remand of the merits proceedings, instructing the Immigration Judge to explain her decision that found that T.Y.S. was not eligible for asylum because two of his convictions constituted "Particularly Serious Crimes." *Id.* at ¶18.

37. On March 1, 2021, the Immigration Judge denied T.Y.S.'s I-589 application on remand. T.Y.S. again appealed the Immigration Judge's decision. *Id.* at ¶18-19.

38. While in ICE detention, T.Y.S.'s mental health conditions deteriorated. He experienced chronic headaches, nightmares, night terrors, sleeplessness, anxiety, racing thoughts, and feelings of hopelessness. In October 2020, T.Y.S. spent time on twenty-four-hour suicide watch.

39. On March 30, 2021, T.Y.S. filed a request for release under *Fraihat v. ICE*. Decl. Muñoz at ¶20.

40. On April 6, 2021, T.Y.S. filed a habeas petition challenging his continued ICE detention without an adequate bond hearing. *See T.Y.S. v. Decker*, Docket No. 21cv2942 (ER). As a result of a stipulation between the parties, on April 27, 2021, this Court issued an order for a bond hearing to be held within 10 days with the burden of proof on the government to establish by clear and convincing evidence that T.Y.S. was a danger or flight risk. The

Order also required the Immigration Judge to consider alternative conditions of release with respect to both dangerousness and risk of flight, and the ability to pay in determining the appropriate bond amount. *See* Stipulation and Order, Exhibit C.

41. On May 4, 2021, T.Y.S. appeared for the habeas-ordered bond hearing. With the proper burden of proof on the government, the Immigration Judge granted the request for release on a \$15,000 bond. Decl. Muñoz at ¶¶22-23; *see* Immigration Judge Bond Order, Exhibit D. After twenty-three months in immigration custody, T.Y.S. was at last released back to his community on May 10, 2021. Although DHS appealed the Immigration Judge's decision on May 19, 2021, the BIA affirmed T.Y.S.'s release on bond. *Id.*

42. After being released from ICE detention in May 2021, T.Y.S. followed the conditions of release and worked diligently to reintegrate into the community. He attended therapy sessions and met with medical providers. Decl. T.Y.S at ¶23.

43. In or around November 2021, T.Y.S. met and fell in love with his partner, and together they had a child born in 2023. *Id.* at ¶24.

44. T.Y.S. continued working on his case for immigration relief following his release from ICE detention. On August 26, 2022, T.Y.S. filed a Motion to Remand Proceedings to introduce newly obtained evidence to support his I-589 application and for consideration of new agency caselaw that would require consideration of T.Y.S.'s mental health conditions in the

Particularly Serious Crime analysis. Decl. Muñoz at ¶25.

45. T.Y.S. has not been arrested, charged, or convicted for any new crimes since 2017. T.Y.S. was living a happy and productive life with his partner and children in Newburgh, New York. Decl. T.Y.S at ¶25.

46. Despite complying with conditions and awaiting a decision from the BIA, in May 2025, T.Y.S. was abruptly re-detained by ICE. T.Y.S. was returning home with his partner when they observed three cars outside. T.Y.S.' partner asked why the agents were at the home and asked to see an arrest warrant. No arrest warrant was provided. Without notice or warning, the agents threw T.Y.S. to the ground and placed him into ICE detention, in front of his partner and stepdaughter. Decl. T.Y.S at ¶¶29-32.

47. As a result, T.Y.S. was re-detained without any notice, hearing, or an on-the-record determination. Neither T.Y.S. nor his counsel were contacted or provided with the basis for the re-detention. *Id.* at ¶32; Decl. Muñoz at ¶¶27-8. Counsel for T.Y.S. contacted ICE officials but did not receive a response and was not provided with any reasons for the cancellation of the bond or offered any changed circumstances that would justify cancelling a bond that an Immigration Judge had set. Nor did the government file any motion for re-determination of custody, or any other motion or notice with the Immigration Court. Decl. Muñoz at ¶¶27-8.

48. To date, T.Y.S. has remained in ICE detention at the Orange County Correctional Facility. He has been unable to obtain necessary

medications, receives rotten food, and is struggling to maintain his mental health in violent, deteriorating conditions. He also struggles as a result of the separation from his partner and children. Decl. T.Y.S at ¶¶32-7.

49. Following T.Y.S.'s re-detention, the BIA issued a decision on August 15, 2025, dismissing the appeal of the Immigration Judge's March 1, 2021 merits decision and denying the August 26, 2022 motion to remand. T.Y.S. filed a timely Petition for Review of the BIA's decision to the U.S. Court of Appeals for the Second Circuit on August 21, 2025, which remains pending with a motion for stay of removal.² Decl. Muñoz at ¶30.

50. On September 15, 2025, T.Y.S. filed a motion for a bond hearing before the Immigration Judge in New York, New York. Although T.Y.S. argued that his re-detention without a change in circumstances was unlawful and that he was entitled to a bond hearing under 8 U.S.C. § 1236(a), the Immigration Judge denied bond based on a finding that the court lacked jurisdiction to hold

² At the time of filing this petition for writ of habeas corpus, the government has filed with the Second Circuit a Notice of Intent to Remove. Counsel for T.Y.S. has filed a response and asked the Second Circuit for an emergency, expedited decision on the motion for stay of removal. However, regardless of the decision on the motion for stay of removal, the claims before this Court remain ripe for review because the re-detention of T.Y.S. was unlawful and he must be released from unlawful detention, regardless of whether his detention is governed by the pre-removal statute at 8 U.S.C. § 1236(a) or post-removal statute at § 1231. *See Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (“This case raises the question of whether a noncitizen subject to a final order of removal and released on an order of supervision is entitled to due process when the government decides—in its discretion—to revoke that release. The Court answers that question simply and forcefully: Yes. Noncitizens, even those subject to a final removal order, have constitutional rights just like everyone else in the United States.”)(citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)).

a bond hearing because the BIA had issued a final agency decision and the case was pending before the Second Circuit. *Id.* at ¶31.

51. T.Y.S. remains in ICE detention at the Orange County Correctional Facility without any individualized, meaningful review of his re-detention and without consideration of whether he is a danger to the community or a flight risk. *Id.*

LEGAL FRAMEWORK

A. Removal Proceedings Under 8 U.S.C. § 1229a

52. The INA provides for removal proceedings to be the “sole and exclusive” procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. § 1229a. Section 1229a(a)(3) states that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether a[] [noncitizen]³ may be admitted to the United States or, if the [noncitizen] has been so admitted, removed from the United States.”

53. “Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service.” 8 C.F.R. § 1003.14(a). The only means to terminate the jurisdiction of the immigration court is a motion to dismiss or terminate. Dismissal in most cases requires that “circumstances of the case have changed

³ This petition uses the term “noncitizen” as equivalent to the statutory term “alien.” See, e.g., *Santos-Zacaria v. Garland*, 598 U.S. 411, 414 n.1 (2023) (citing *Nasrallah v. Barr*, 590 U. S. 573, 578 n. 2 (2020)) (slip op., at 4, n. 2).

after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.” 8 C.F.R. § 239.2(a)(7).

B. Statutory Detention Authority

54. Chapter 8 U.S.C. Section 1226(a) is the discretionary detention statute in the Immigration and Nationality Act. Section 1226(a) provides:

On a warrant issued by the Attorney General, a [] [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested [noncitizen]; and

(2) may release the [noncitizen] on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the [noncitizen] with work authorization (including an “employment authorized” endorsement or other appropriate work permit), unless the [noncitizen] is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

8 U.S.C. § 1226(a)

55. An Immigration Judge previously granted bond to T.Y.S. pursuant to § 1226(a)(2).

C. Due Process Concerns Regarding ICE Detention and Re-Detention

56. “In our society liberty is the norm,” and detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). “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); *see also Reno v. Flores*, 507 U.S. 292 (1993); *Demore v. Kim*, 538 U.S. 510 (2003).

57. The Fifth Amendment accordingly requires— “[a]t the least”— that detention be “reasonabl[y] relat[ed]” to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

58. Incarceration can be used to punish criminal acts but may be imposed only after extensive procedural protections designed to ensure that punishment is warranted and that a person is not unjustly deprived of liberty. *See Santobello v. New York*, 404 U.S. 257, 264 (1971) (Douglas, J., concurring). By contrast, civil detainees “may not be punished.” *Foucha*, 504 U.S. at 80; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Accordingly, the constitutional constraints on civil detention are even higher than in the criminal context. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003) (applying *Salerno* line of cases to civil immigration detention).

59. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in “special and narrow nonpunitive circumstances,”

Zadvydas, 533 U.S. at 690, and that it must “bear[] [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (*quoting Jackson*, 406 U.S. at 738). Absent a reasonable relation to these governmental objectives, civil detention becomes impermissible punishment. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). In the immigration context, the Supreme Court has recognized only two valid purposes for civil immigration detention—to mitigate a risk of danger to the community and to prevent flight. *Demore*, 538 U.S. at 528.

60. In addition, a person’s liberty cannot be infringed upon without “adequate procedural protections.” *Zadvydas*, 533 U.S. at 690-91; *Hendricks*, 521 U.S. at 357; *see also Addington*, 441 U.S. at 425-27. A long line of Supreme Court precedent recognized the liberty interests of individuals on conditional release. In those cases, the Supreme Court held that due process requires notice and an opportunity to be heard before the government deprives a person of their conditional liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding liberty interest of individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process of *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest

triggering the same pre-deprivation process as *Morrissey* provides); *see also 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”).

61. In *Morrissey*, the Supreme Court considered the process that was due to a parolee prior to parole revocation. The Court concluded that all “liberty is valuable” and must be seen as within the protection of the due process clause. Therefore, even though parole may be lawfully revoked, “[i]t’s termination calls for some orderly process, however informal.” 408 U.S. at 482. The Court went on to find that while the government may have many interests for returning an individual to imprisonment, it “has no interest in revoking parole without some informal procedural guarantees. . . . Nor are we persuaded by the argument that revocation is so totally a discretionary matter that some form of hearing would be administratively intolerable.” *Id.* at 483.

62. To comport with due process, the Supreme Court concluded that a hearing to determine whether “the individual has in fact breached the conditions of parole” not only serves the individual’s protected liberty interests, but also serves the interest of society “in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole . . .” *Id.* at 483-84 (*citing People ex rel. Menechino v. Warden*, 27 N.Y.2d 376, 379, and n. 2 (1971)).

63. This rationale equally applies to the revocation of release in the INA and re-detention by ICE. *Demore*, 538 U.S. at 523 (quoting *Reno*, 507 U.S. at 306) (“It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.”). District courts have recognized that non-citizens facing civil re-detention share this constitutionally protected interest in their continued liberty. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the non-citizen petitioner had a “liberty interest in remaining out of [immigration] custody”); see also *Meza v. Bonnar*, No. 18-cv- 02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised “serious questions going to the merits” that she had a “vested interest” in her continued release from immigration detention). Indeed, as the court in *Ortega* recognized, a petitioner subject to a civil detention scheme has an “arguably greater” liberty interest “than the interest of parolees in *Morrissey*.” *Ortega*, 415 F. Supp. at 970.

64. Because of T.Y.S.’s protected interest in his liberty, the Due Process Clause requires, at a minimum, sufficient procedural protections before the government can strip T.Y.S. of that liberty. As set forth in *Mathews v. Eldridge*, this Court must consider three factors to determine what procedural protections the Constitution requires: (1) “the private interest that will be affected by the official action;” (2) “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 (3) “the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. 319, 335 (1976).

65. Courts in this district have applied the *Mathews* factors to conclude that civil immigration re-detention, without notice and without evidence of changed circumstances, violates due process. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 at *4 (S.D.N.Y. June 18, 2025) (“Respondents’ ongoing detention of [Kelly] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights.”); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025) (concluding that re-detention of noncitizen, without any individualized assessment, established high risk of erroneous deprivation of his protected liberty interest under Due Process Clause); *Lopez v. Sessions*, No. 18. Civ. 4189, 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (Finding that the re-detention of a minor, in the absence of any procedure or evidentiary findings, established the risk of erroneous deprivation of a liberty interest); *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (finding that ongoing detention “with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond” violated due process.)

D. Detention and Re-Detention in light of the Administrative Procedure Act

66. The APA creates a presumption in favor of judicial review over agency action. *See I.N.S. v. St.Cyr*, 533 U.S. 289, 298 (2001). A petitioner “adversely affected” by agency action may seek judicial review through a petition for habeas corpus. 5 U.S.C. §§ 702, 703. A reviewing court must set aside agency action that is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to a constitutional right; (3) in excess of statutory authority or limitations; (4) without observance of procedures required by law; or (5) unwarranted by the facts. 5 U.S.C. §§ 702, 706(2); *Natural Resources Defense Council v. U.S. E.P.A.*, 808 F.3d 556, 569 (2d Cir. 2015).

67. The INA grants ICE the ability to revoke a non-citizen’s immigration release on recognizance. 8 U.S.C. § 1226(b). Notwithstanding the statutory language, in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens; ICE must demonstrate changed circumstances. *See Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D.Ca. Nov 20. 2017) (government conceding that “DHS has incorporated this holding [of *Matter of Sugay*] into its practice.”).

68. Courts across the country have recognized that individuals such as T.Y.S. possess a liberty interest in remaining free from re-detention without due process. *See Valdez*, 2025 WL 1707737; *Lopez Benitez*, 2025 WL 2371588; *Lopez*, 2018 WL 2932726, at *15; *Kelly*, 2025 WL 2381591, at *3;) *Diaz v.*

Kaiser, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (granting TRO and restraining Respondents from re-detaining Petitioner-Plaintiff without notice and a hearing.); *Pinchi v. Noe*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025) (granting TRO and enjoining respondents from re-detaining Petitioner-Plaintiff without notice and a pre-deprivation hearing before a neutral decisionmaker.); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (finding that re-detention of petitioner, after many years of release on bond, without notice and opportunity to be heard reflected a likelihood of success for a violation of due process).

69. T.Y.S.’ re-arrest and subsequent re-detention by ICE in May 2025 is a “final agency action” reviewable by this Court, and that this arrest resulted in the deprivation of his liberty in the absence of any pre-deprivation notice or opportunity to be heard, in violation of the APA and the Due Process Clause of the Fifth Amendment.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Procedural Due Process); Administrative Procedure Act 5 U.S.C. §§ 702, 706

70. T.Y.S. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

71. ICE’s decision to revoke T.Y.S.’s release is a final agency action subject to review under the Administrative Procedure Act (“APA”). 5 U.S.C. §§

702, 706.

72. The Fifth Amendment's Due Process Clause protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V.

73. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

74. T.Y.S.'s detention is a significant deprivation of liberty. It violates the Due Process Clause because no change in T.Y.S.'s case compels a change in custody status. His detention is not rationally related to any immigration purpose; it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning him; and it lacks any statutory authorization. Moreover, he was not accorded sufficient process prior to his sudden re-detention by ICE. *See Morrissey*, 408 U.S. at 471 (holding that parole may not be revoked without the minimum due process protections of written notice of the alleged violations, disclosure of adverse evidence, opportunity to present defense evidence and confront witnesses, hearing before a neutral adjudicator, and written statement of fact findings).

75. ICE did not notify T.Y.S. of the reasons for termination of his release on bond nor any reasons for his re-detention. Nor did ICE provide T.Y.S. with the opportunity to meet with ICE officials either before or promptly

after he was re-detained, so that he could respond to the reasons for the revocation, if any.

76. An Immigration Judge previously made the reasoned decision to release T.Y.S. from detention in May 2021, and he has remained at liberty for four years. He is not a threat to the community nor a flight risk. The Immigration Judge already determined that he is not a flight risk when it decided to release him on bond. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”).

77. The Due Process Clause entitles T.Y.S. to a meaningful process to assess whether his present detention is justified. The arrest and detention of T.Y.S. without providing him with an opportunity to contest his re-detention in front of a neutral adjudicator violates the Fifth Amendment’s Due Process Clause. *See, e.g., Valdez*, 2025 WL 1707737 at *4-8; *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137 (W.D.N.Y. 2025).

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution (Substantive Due Process); 5 U.S.C. §§ 702, 706

78. T.Y.S. repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

79. The Constitution establishes due process rights for “all ‘persons’

within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

80. ICE has not demonstrated that T.Y.S. —who has not been arrested or charged with any crimes since his release— needs to be detained. *See Zadvydas*, 533 U.S. at 690 (discussing immigration detention’s regulatory goals: ensuring the noncitizen’s appearance during removal proceedings and preventing danger to the community).

81. T.Y.S. is neither a danger to the community nor a flight risk, and his detention is arbitrary on its face. He has faithfully complied with every condition of his release for four years, and no changed circumstances exist to warrant the revocation of his release.

82. Because there is no rational basis for T.Y.S.’s detention, his detention violates the Fifth Amendment’s Due Process Clause.

THIRD CLAIM

Violation of the Administrative Procedure Act—Arbitrary and Capricious; 5 U.S.C. §§ 702, 706

83. T.Y.S. repeats and re-alleges the allegations contained in all preceding paragraphs as if fully set forth herein.

84. The APA provides that a court “shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

85. Moreover, under the APA, “final agency action for which there is

no other adequate remedy in a court [is] subject to judicial review.” 5 U.S.C. § 704. The reviewing court “shall ... hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “unsupported by substantial evidence.” 5 U.S.C. §§ 706(2)(A), (E).

86. As the Supreme Court has explained,

Though the agency’s discretion is unfettered at the outset, if it announces and follows-by rule or by settled course of adjudication-a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as ‘arbitrary, capricious, [or] an abuse of discretion’ within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

INS v. Yueh-Shaio Yang, 519 U.S. 26, 32 (1996).

87. T.Y.S. has complied with all conditions of his release on bond, and there are no changed circumstances that warrant the revocation of his release.

88. Moreover, ICE has not articulated a reason for changing course and revoking T.Y.S.’s release. “[A]n administrative agency is not allowed to change direction without some explanation of what it is doing and why.” *Int’l Union, UAW v. NLRB*, 802 F.2d 969, 973-74 (7th Cir. 1986). And a court “may not infer an agency’s reasoning from mere silence.” *Arrington v. Daniels*, 516 F.3d 1106, 1112 (9th Cir. 2008).

89. Respondent’s re-detention of T.Y.S. and revocation of his post-habeas release on bond by and Immigration Judge, without providing any procedural protections and without establishing material changed

circumstances justifying re-detention, as required by *Matter of Sugay*, 17 I & N. Dec. 637 (BIA 1981) and DHS' own internal policies and practices, see *Saravia*, 280 F.Supp.3d at 1197, was arbitrary and capricious and in violation of Respondents' authority under the INA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the New York Field Office of Immigration and Customs Enforcement pending the resolution of this case;
- 3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;
- 4) Declare that Petitioner's arrest and re-detention violate the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, the Immigration and Nationality Act and its implementing regulations, and the Suspension Clause of Article I of the U.S. Constitution;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to immediately release T.Y.S. from custody;
- 6) In the alternative, issue an Order for Respondents to release T.Y.S.

on his own recognizance pending the outcome of a pre-deprivation hearing where the Respondents bear the burden of proof to show changed circumstances justifying re-detention.

- 7) Enjoin Respondents from re-arresting Petitioner without providing notice of the reasons for the revocation of his release and an opportunity to respond;
- 8) Award Petitioner reasonable attorneys' fees and costs for this action under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- 9) Grant Petitioner any other relief this Court deems just and proper.

Respectfully submitted,

/s/ Elyssa Williams
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*SDNY admission pending

EXHIBITS

Exhibit A – Declaration of T.Y.S.

Exhibit B – Declaration of Steven Muñoz, Esq.

Exhibit C – Stipulation and Order, *T.Y.S. v. Decker, et. al.*, No. 21 Civ. 2942 (ER)

Exhibit D - Immigration Bond Order

VERIFICATION

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in this Petition and Complaint with Petitioner. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

/s/ Steven Muñoz, _
Steven Muñoz, Esq.
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