U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:25-cv-06323-JD

Yang v. Kaiser et al
Assigned to: Judge James Donato
Cause: 8:1105(a) Aliens: Habeas Corpus to Release INS Detainee

Date Filed: 07/28/2025
Jury Demand: None
Nature of Suit: 463 Habeas Corpus – Alien Detainee
Jurisdiction: U.S. Government Defendant

Petitioner

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Zhiyu YANG,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

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

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

Respondents-Defendants.

Case No. 3:25-cv-6323

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. Petitioner, Zhiyu YANG, by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from returning him to an immigration jail without first providing him a due process hearing where the government bears the burden to demonstrate to a neural adjudicator that his custody is justified by clear and convincing evidence. As a refugee from China who has lived in the United States since 2011, and who has been reporting to ICE on a regular basis since his release from custody seven years ago, his removal from the United States is not reasonably foreseeable because China will not issue him a travel document and thus any re-detention by ICE would be unlawful as it would be limitless in duration. Thus, Mr. Yang's re-arrest would be unconstitutional because it is indefinite and illegal absent any pre-deprivation hearing before a neutral arbiter.

2. Mr. Yang has also never been ordered removed to any third country or notified of such potential removal. Given the Supreme Court of the United States' decision on June 23, 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded Respondents from removing noncitizens to third countries without notice and an opportunity to seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever[1]—in violation of clear statutory obligations set forth in the Immigration and Nationality Act (INA), binding treaty, and due process. In the absence of the nation-wide injunction, individual lawsuits like the instant case are the only method to challenge the illegal third-country removals.

3. In 2011, Mr. Yang fled China for the United States to avoid future persecution and torture. The following year, the U.S. Citizenship and Immigration Services (USCIS) granted him asylum due to his well-founded fear of persecution, and he later adjusted his status to that of a

[1] CBS News, "Politics Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/.

lawful permanent resident (i.e., a green card holder) in August 2013.

4. In March 2014, following a marital dispute with his former spouse that stemmed from the stress and emotional toil caused by the tragic passing of one of their twin daughters, law enforcement arrested him and he faced several charges in criminal proceedings before the San Mateo Superior Court. During those proceedings, Mr. Yang's criminal defense attorney did not advise him of the clear and severe immigration consequences associated with a conviction for California Penal Code (PC) § 273.5. When Mr. Yang's prison sentence ended, ICE took him into custody and charged him with removability as a result of his PC § 273.5 conviction, and an Immigration Judge (IJ) ordered his removal from the United States in January 2017. In January 2018, ICE released Mr. Yang from custody on an Order of Supervision (OSUP)—filed on a Form I-220B—because it lacked a travel document for him.

5. Since January 2018, Mr. Yang has exercised his right to liberty. He continues to live and work in the United States as a contractor for Tesla, and he plays an integral role in the life of his U.S. citizen daughter. *Id.* at Ex. H (Proof of U.S. Citizen Daughter); *see also id.* (Letter from U.S. Citizen Daughter). Mr. Yang also served as a volunteer Street Ambassador for Asian Health Services in Oakland, California, "regularly and reliably fulfilling his duties[,] impressing staff and community members with his courteous and friendly demeanor as he escorted staff before and after work as well as performing logistical support for many organization and communities activities and programs." *Id.* at Ex. I (Letter of Support from Dr. Chan).

6. Mr. Yang's next in-person appointment with ICE is scheduled for Thursday, July 31, 2025. He faces the very real possibility of being re-arrested and re-incarcerated even though he is not a flight risk or danger to the community, and despite the fact that ICE does not have a travel document that would enable the agency to effectuate his physical removal from the United States to China. In recent weeks, individuals in identical or substantially similar circumstances as Mr. Yang have been re-arrested and re-incarcerated absent notice and a hearing and even though ICE could not (and still cannot) physically them from the country. *See, e.g.*, *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) (stateless Palestinian on OSUP likely to be re-arrested despite no likelihood of removal); *Hoac v. Becerra*,

No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (Vietnamese national on OSUP rearrested even though government had not obtained travel document); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (E.D. Cal. July 16, 2025) (same).[2]

7. As will be more fully explained below, ICE has refused to provide assurances that it will not re-arrest and re-incarcerate Mr. Yang on July 31, 2025. *See* Sinodis Decl. Furthermore, ICE does not possess a travel document for Mr. Yang to China and therefore his removal is not reasonably foreseeable. *Id.*

8. The OSUP issued to Mr. Yang in January 2018 permitted him to remain free from custody following his removal proceedings because his removal is not reasonably foreseeable, and he is otherwise neither a flight risk nor a danger to the community. The OSUP also required him to attend regular check in appointments at the ICE San Francisco Field Office and permitted him to apply for work authorization. 8 C.F.R. § 241.5. For the past seven years, Mr. Yang has complied with the terms of his OSUP, attending his appointments as instructed. Mr. Yang applied for and received a work authorization document, and he began working as a contractor for Tesla delivering parts while also volunteering his time at Asian Health Services in Oakland, California. Sinodis Decl. at Ex. I (Letter from Dr. Chan).

9. By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Yang's case, due process requires notice and a hearing, *prior to any re-arrest*, at which he would be afforded the opportunity to advance his arguments as to why he should not be re-detained.

[2] *See also* "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

10. Here, Respondents created a reasonable expectation that Mr. Yang would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

11. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g.*, *Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of the interest recognized, not the name given that interest by the state or other independent source.") (internal quotations omitted).

12. Further, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Because ICE does not have a travel document for Mr. Yang, his removal is not reasonably foreseeable in this case, and the government has not provided him with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining him. His re-incarceration without any reasonably foreseeable end point would therefore be unconstitutionally prolonged in violation of clear Supreme Court precedent.

13. The basic principle that individuals placed at liberty are entitled to process before the government imprisons them has particular force here, where Mr. Yang was *already* previously released from ICE detention seven years ago, after which he began to rebuild his life, including by securing employment. Under these circumstances, ICE is required to afford him the opportunity to advance arguments in favor of his freedom before robbing him of his liberty. He must therefore not be re-detained unless and until ICE proves to a neutral arbiter that his removal has become reasonably foreseeable and his detention is necessary because there has been a material change in circumstances establishing that he is a flight risk or a danger to the community. Numerous federal district courts in the Northern and Eastern Districts of California

have already ordered similar relief. *See, e.g.*, *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025). During any custody redetermination hearing that occurs, the neutral arbiter must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that ICE may establish.

14. Moreover, under the INA, Respondents have a statutory obligation to remove Mr. Yang *only* to the designated country—in this case, China. 8 U.S.C. § 1231(b)(2)(A)(ii). If Mr. Yang is to be removed to a third country, Respondents *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[3] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* Sinodis Decl. at Ex. J (DHS Policy Regarding Third Country Removal). The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals

[3] United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading.

only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. Thus, in this individual habeas petition, Mr. Yang submits that he cannot be removed to any third country unless he is first provided with adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Other federal district courts have already issued similar relief. *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D. Wash. June 30, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx (C.D. Cal. Jul. 14, 2025); *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

CUSTODY

15. Mr. Yang is currently released from custody on an OSUP issued by ICE that sets forth a number of restrictions on his liberty, including the requirement that he report to ICE whenever instructed. Such stringent requirements "impose[] conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*") (holding that comparable supervision requirements constitute "custody" sufficient to support habeas jurisdiction).

JURISDICTION

16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*, habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law.

17. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, the Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue

a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas*, 533 U.S. 678.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC 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).

19. 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).

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

VENUE

21. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of California; because Mr. Yang is under the jurisdiction of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern District of California[4]; and because there is no real property involved in this action.

22. Furthermore, because Mr. Yang is not challenging any present physical confinement but

[4] U.S. Immigration and Customs Enforcement, *ICE Field Office*, https://www.ice.gov/contact/field-offices (stating the San Francisco ICE Field Office's area of responsibility is, as relevant here, "Northern California.").

instead the likelihood of his future unlawful re-arrest and re-incarceration on July 31, 2025, during his ICE check-in appointment, the San Francisco ICE Field Office is the proper Respondent-Defendant.

INTRADISTRICT ASSIGNMENT

23. Any decision to re-arrest and re-incarcerate Mr. Yang will be made by the San Francisco Field Office of ICE, and Mr. Yang's appointment is scheduled before the San Francisco Field Office of ICE. Therefore, the assignment to the San Francisco Division of this Court is proper under N.D. Local Rule 3-2(d).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

24. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

25. No statutory exhaustion requirements apply to Mr. Yang's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

PARTIES

26. Mr. Yang was born in China and fled to the United States to seek asylum in 2011. On March 28, 2012, USCIS's Asylum Office granted him asylum, and he subsequently became a lawful permanent resident (i.e., a green card holder) in August 2013. Sinodis Decl. at Ex. B (Copy of Lawful Permanent Resident Card). In 2014, Mr. Yang pleaded no contest to several offenses under California Penal Code, ultimately resulting in his being placed into removal

proceedings before the San Francisco Immigration Court where he lost his green card. ICE held Mr. Yang in custody for years until he filed a petition for writ of habeas corpus, at which point ICE released him on an OSUP in January 2018 because it could not effectuate his removal to China. Since that time, Mr. Yang has complied with all conditions of release, including attending ICE check-ins and updating his address whenever necessary. Mr. Yang's next check-in with ICE is scheduled for July 31, 2025.

27. Respondent Polly KAISER is the Acting Field Office Director of ICE, in San Francisco, California and is named in her official capacity. ICE is the component of the DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In her official capacity, she is the legal custodian of Mr. Yang.

28. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Mr. Yang.

29. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Mr. Yang.

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

STATEMENT OF FACTS

31. Mr. Yang is citizen and national of China who is the father of two U.S. citizen daughter,

one of whom is twenty-four years old and the other eleven. He currently lives in the Bay Area, and works as a contractor for Tesla. He also previously served as a Street Ambassador for Asian Health Services in Oakland, California, where he was described as courteous, diligent, and professional. *Id.* at Ex. I (Letter of Support from Dr. Chan).

32. In 2011, Mr. Yang lawfully entered the United States with a visitor's visa. He thereafter affirmatively applied for asylum due to his well-founded fear of persecution in China. On March 28, 2012, USCIS granted Mr. Yang asylum. Sinodis Decl. at Ex. A (Asylum Approval).

33. A little over one year later, on August 14, 2013, Mr. Yang adjusted his status to that of a lawful permanent resident (i.e., a green card holder). Sinodis Decl. at Ex. B (Copy Lawful Permanent Resident Card).

34. On March 6, 2014, Mr. Yang and his former spouse had a relationship dispute shortly after the tragic loss of one of their twin daughters. Officers arrived to their residence and arrested Mr. Yang, and criminal proceedings were initiated against him in the Superior Court for the County of San Mateo. Mr. Yang later entered a no contest plea to one count of PC § 207, one count of PC § 273.5(a), and one count of California PC § 273a(a), for which he received a total sentence of three years in the California Department of Corrections.

35. Prior to entering his no contest plea, Mr. Yang's criminal defense attorney failed to advise him of the clear and severe immigration consequences associated with a conviction for PC § 273.5, in clear violation of the Fifth and Sixth Amendments to the U.S. Constitution and longstanding California law. *See, e.g., Padilla v Kentucky*, 559 US 356 (2010); *People v Soriano*, 194 Cal.App.3d 1470 (1987); *People v. Barocio*, 216 Cal.App.4th 99 (1989); *People v. Bautista*, 115 Cal.App.4th 229 (2004). Because Mr. Yang was lawful permanent resident, it was critical for him to not be convicted of an "aggravated felony," which is defined as, *inter alia*, a "crime of violence" for which a term of imprisonment of one year or more is imposed. *See* 8 U.S.C. § 1158(b)(2)(B)(i); 8 U.S.C. § 1101(a)(43)(F). A "crime of violence" conviction with a sentence of one year or more would cause Mr. Yang to lose his green card, and it would also render him ineligible for nearly all defenses to removal.

36. The Ninth Circuit Court of Appeals has long held California PC § 273.5 to be a "crime

of violence," and given that Mr. Yang was sentenced to a term of two years in prison for his PC § 273.5 conviction, he is an "aggravated felon" under the INA. *See, e.g., U.S. v. Laurico-Yeno*, 590 F.3d 818, 820 (9th Cir. 2010); *Vasquez-Hernandez v. Holder*, 590 F.3d 1053, 1055-56 (9th Cir. 2010).

37. Notably, Mr. Yang has already consulted with a criminal defense attorney for the purpose of pursuing post-conviction relief to vacate his California PC § 273.5 conviction. Sinodis Decl. In addition to not being properly advised by his former attorney as to the immigration consequences of his plea, in clear violation of the Fifth and Sixth Amendments and binding California law, there existed numerous alternative options for resolving his criminal proceedings that would not have resulted in the loss of his green card. *Id.*

38. On September 28, 2016, upon the completion of Mr. Yang's prison sentence, ICE took him into custody and initiated removal proceedings against him by filing a Notice to Appear (NTA), charging him with removability for, among other things, having been convicted of an aggravated felony crime of violence. Sinodis Decl. at Ex. C (NTA) (charging Mr. Yang with removability pursuant to "Section 237(a)(2)(A)(iii)," 8 U.S.C. § 1227(a)(2)(A)(iii)); *see also* 8 U.S.C. § 1227(a)(2)(A)(iii) ("Any alien who is convicted of an aggravated felony at any time after admission is deportable.").

39. On January 31, 2017, an IJ at the San Francisco Immigration Court ordered Mr. Yang removed from the United States. Sinodis Decl. at Ex. D (Order of Removal). Although ICE could not physically remove Mr. Yang from the United States because China would not issue a travel document, ICE continued to hold him in custody.

40. In September 2017, Mr. Yang filed a petition for writ of habeas corpus with the Central District of California, arguing that his indefinite detention violated his constitutional rights. *See Yang v. Duke*, Case No. 17-01916-GW (JEM).

41. Then, on January 19, 2018, ICE released Mr. Yang from detention pursuant to a Form I-220B, Order of Supervision (OSUP). Sinodis Decl. at Ex. E (Notice of Decision to Release); *see also id.* at Ex. F (OSUP). The OSUP sets forth numerous restrictions on Mr. Yang's liberty, including that he appear for any and all in-person appointments when instructed, not travel

outside the state of California for more than forty-eight hours without receiving approval from ICE, update his address and employment status within forty-eight hours of any change, and that he assist ICE will obtaining any necessary travel documents. *Id.*

42. For more than seven years, Mr. Yang has remained in full compliance with his OSUP and ICE has not sought his re-detention. Mr. Yang has secured full time employment, rebuilt his life, and become a productive and well-respected member of the community. Sinodis Decl. He is not at all the type of person for whom re-incarceration is required.

43. On August 1, 2024, Mr. Yang attended his last check-in appointment with ICE. At that time, ICE scheduled him to appear again on July 31, 2025. *See id.* at Exs. F-G (OSUP Compliance).

44. On information and belief, on January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make seventy-five arrests per day.[5]

45. Multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the Sacramento Area, San Francisco Bay Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[6]

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

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[5] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan. 26, 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

[6] *See supra* n.2; "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

[7] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University

47. Decisions issued by other courts in this District and the Eastern of District of California further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g.*, *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 ("Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that 'things are different now.'"); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

48. On July 24, 2025, undersigned Counsel contacted the U.S. Attorney's Office for the Northern District of California to request assurances from ICE that it would not re-arrest and re-incarcerate Mr. Yang on July 31, 2025. Sinodis Decl. ICE did not provide any assurances. *Id.*

49. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and the fact that ICE has not provided assurances that it will not re-arrest and re-incarcerate Mr. Yang, it is highly likely Mr. Yang will be arrested and incarcerated at his appointment. This is true even though Mr. Yang is neither a flight risk nor a danger to the community and despite ICE not having a travel document that would enable the agency to effectuate his removal from the United States. He faces the very real possibility of being re-incarcerated and transferred out of the District, far away from his family and community and quite possibly to a third country that he has never known.

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 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking 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-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

50. To be sure, Mr. Yang is also at risk of being unlawfully removed to a third country without constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture, in violation of the INA, binding international treaty, and due process. Currently, DHS has a policy of removing or seeking to remove individuals to third countries *without* first providing adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country. *See* Sinodis Decl. at Ex. J (DHS Policy Regarding Third Country Removal)

51. Intervention from this Court is therefore required to ensure that Mr. Yang is not (1) unlawfully re-arrested and re-incarcerated, (2) held in unjustified, prolonged, and indefinite custody, (3) removed to a third country, and (4) subjected to irreparable harm as a result.

LEGAL BACKGROUND

Right to a Hearing Prior to Re-incarceration

52. Following a final order of removal, ICE is directed by statute to detain an individual for ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

53. If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

54. Post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six (6) month period, if a detainee provides "good reason" to believe that their removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

55. That said, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas* at 701.

56. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community). Thus, Mr. Yang must not be taken into custody because he does not pose a danger or flight risk that warrants post-final-order detention, regardless of whether his removal can be effectuated within a reasonable period of time. This is especially so because ICE has *already* released Mr. Yang from detention because he is neither a flight risk nor a danger to the community. *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)).

57. The government's own regulations contemplate this requirement. They dictate that even after ICE determines that removal is reasonably foreseeable—and that detention therefore does

not per se exceed statutory authority—the government must still determine whether continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2) (providing that where removal is reasonably foreseeable, "detention will continue to be governed under the established standards" in 8 C.F.R. § 241.4).

58. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE to conduct "90-day custody reviews" prior to expiration of the ninety-day removal period and to consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among the factors to be considered in these custody reviews are "ties to the United States such as the number of close relatives residing here lawfully"; whether the noncitizen "is a significant flight risk"; and "any other information that is probative of whether" the noncitizen is likely to "adjust to life in a community," "engage in future acts of violence," "engage in future criminal activity," pose a danger to themselves or others, or "violate the conditions of his or her release from immigration custody pending removal from the United States." *Id.*

59. Individuals with final orders who are released after a post-order custody review are subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, as Mr. Yang was, ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

Mr. Yang's Protected Liberty Interest in His Release

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

61. Since January 2018, Mr. Yang exercised that freedom pursuant to his prior release from custody by ICE and placement on an OSUP. Sinodis Decl. at Exs. E-F (OSUP). He thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d

----, 2025 WL 2084921, at *3 ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody").

62. Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. In this case, in the absence of a travel document from China that actually permits Mr. Yang's removal to China, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-detention would be unconstitutional.

63. Just as importantly, Mr. Yang continued presenting himself before ICE for his regular check-in appointments for the past seven years, where ICE did not seek to re-arrest him during this time. ICE instead gave him a future date and time to appear again.

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

65. This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level

of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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

67. Here, when this Court "'compar[es] the specific conditional release in [Mr. Yang's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Yang's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

68. Mr. Yang has complied with all conditions of release for over seven years. He has a substantial claim for post-conviction relief due to his criminal defense attorney's ineffective assistance of counsel. If and when his PC § 273.5 conviction is vacated, he will be able to reopen his removal proceedings and restore his lawful permanent residency.[8]

[8] Under California Penal Code § 1473.7, people like Mr. Yang who are no longer in criminal custody can vacate legally defective convictions. Subsection (a)(1) provides people the opportunity to vacate convictions like Mr. Yang's that were legally defective due to "prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or

Mr. Yang's Liberty Interest Mandates a Hearing Before any Re-Arrest

69. Mr. Yang asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for seven years, during which time he has complied with all conditions of release, (3) where he has a substantial claim for post-conviction relief and possible reopening and restoration of his green card status, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

70. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Mr. Yang's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

71. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process

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nolo contendere." Cal. P.C. § 1473.7(a)(1). Under immigration law, an offense vacated under § 1473.7(a)(1) is therefore no longer a "conviction" for immigration purposes and may not form the basis for removability or a denial of immigration relief. *See* INA § 101(a)(48)(A); *Matter of Pickering*, 23 I&N Dec. 621 (2003); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2011).

satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

72. Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Yang with notice and a hearing *prior* to any re-incarceration and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Mr. Yang's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

Mr. Yang's Private Interest in His Liberty is Profound

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

liberty interest even though he is under conditional release.

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

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

The Government's Interest in Re-Incarcerating Mr. Yang Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing That Comports with Due Process is Minimal

76. The government's interest in detaining Mr. Yang without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Yang unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Yang when the Court considers that the process he seeks—notice and a hearing regarding whether his OSUP should be revoked given that ICE lacks a travel document for him and he is neither a flight risk nor a danger—is a standard course of action for the government. Providing Mr. Yang with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of review to individuals in Mr. Yang's same circumstances. 8 C.F.R. § 241.4(e)-(f).

77. Because immigration detention is civil, it can have no punitive purpose. The

government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it has a sudden interest in detaining Mr. Yang due to alleged dangerousness, or due to a change in the foreseeability of his removal to China, as his circumstances have not changed since his release from ICE custody in January 2018.

78. Mr. Yang has continued to appear before ICE on a regular basis for each and every appointment hat has been scheduled. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3 ("the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live up to the ... conditions [of release].'") (quoting *Morrissey*, 408 U.S. at 482).

79. As to flight risk, ICE determined that reporting requirements were sufficient to guard against any possible flight risk, to "assure [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Mr. Yang's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he is likely to present himself at any future ICE appearances, as he always has done. The government's interest in detaining him at this time is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[9] *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("The law requires a change in relevant facts, not just a change in [the government's] attitude") (internal quotations omitted). Moreover,

[9] *Id.*

nothing has changed regarding the lack of foreseeability of his removal to China.

80. Continued freedom from confinement until ICE assesses and demonstrated that Mr. Yang is a flight risk or danger to the community, or that his detention is not going to be indefinite, is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

81. Providing Mr. Yang with a hearing before this Court (or a neutral decisionmaker) regarding any re-arrest is a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to require some amount of bond—or if his release should be revoked. But there is no justifiable reason to re-incarcerate Petitioner prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483. Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Yang does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated.

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

82. Providing Mr. Yang a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that he should be detained because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight

risk.

83. Under the process that ICE maintains is lawful—which affords Mr. Yang no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Yang will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Mr. Yang. 8 C.F.R. § 241.4(e)-(f).

84. By contrast, the procedure Mr. Yang seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest that would be effected because it possesses a travel document that would enable the agency to remove Mr. Yang—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

85. Due process also requires consideration of alternatives to detention at any hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in

determining whether Petitioner's re-incarceration is warranted.

Right to Constitutionally Adequate Procedures Prior to Third Country Removal

86. Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "*shall* remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. *See id.* § 1231(b)(2)(D); *see also generally Jama v. ICE*, 543 U.S. 335, 341 (2005).

87. As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) ("Shall" means "[h]as a duty to; more broadly, is required to . . . . This is the mandatory sense that drafters typically intend and that courts typically uphold."); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that "shall" language in a statute was unambiguously mandatory). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful. Several district courts have already found as much. *See Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *J.R.*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4.

88. Moreover, prior to any third country removal, ICE must provide Mr. Yang with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[10] Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful

[10] *See supra* n.3.

opportunity to contest that removal if the individual has a fear of persecution or torture in that country. Sinodis Decl. at Ex. J (DHS Policy Regarding Third Country Removal). This policy clearly violates due process and the United States' obligations under the Convention Against Torture.

89. The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture, in recognition that the government's policy violates due process and the United States' obligations under the Convention Against Torture. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025), limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with nature, and not the substance, of the nationwide preliminary injunction.

90. Thus, it is clear that if Mr. Yang were to be removed to any third country it would violate his due process rights unless he is first provided with constitutionally adequate notice and a meaningful opportunity to apply for protection under the Convention Against Torture. In the absence of any other injunction, intervention by this Court is necessary to protect those rights.

FIRST CAUSE OF ACTION

Procedural Due Process

U.S. Const. amend. V

91. Mr. Yang re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

92. 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.

93. Mr. Yang has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without a hearing before this Court. *See Morrissey*, 408 U.S. at 487-488.

94. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates that his removal is reasonably foreseeable and that, taking into consideration alternatives to detention, Mr. Yang is a danger to the community or a flight risk, such that his re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

95. Mr. Yang re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

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

97. Mr. Yang has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

98. Since January 2018, Mr. Yang has complied with the conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

99. For these reasons, Mr. Yang's re-arrest without first being provided a hearing would violate the Constitution.

100. The Court must therefore order that, prior to any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia,* whether clear and convincing evidence demonstrates that his removal is reasonably foreseeable and that, taking into consideration alternatives to detention, Mr. Yang is a danger to the community or a flight risk, such that his re-incarceration is warranted.

THIRD CAUSE OF ACTION

Unlawful Re-Detention

101. Mr. Yang re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

102. Mr. Yang was previously released by Respondents because he did not pose a danger or flight risk. As long as he complies with the conditions of his release, Respondents have authority to revoke release only if circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6).

103. Were Respondents to revoke his release, their actions would be arbitrary, capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest. *Young*, 520 U.S. at 150; *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal 2018). Just like people on pre-parole, parole, probation status, bail, or bond have a liberty interest, so too does Mr. Yang have a liberty interest in remaining out of custody on his Forms I-220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019). He should therefore be provided a full and fair hearing before a neutral arbiter where the government bears the burden of showing that circumstances have changed such that his removal is reasonably foreseeable, and otherwise evidence of his dangerousness and flight risk is established by clear and convincing evidence. *Id.*

FOURTH CAUSE OF ACTION

Violation of the INA and Applicable Regulations

104. Mr. Yang re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

105. The INA provides for detention during the ninety (90) day "removal period" that begins immediately after a noncitizen's order of removal becomes final. 8 U.S.C. § 1231(a)(1). After the ninety (90) day removal period, the INA and its applicable regulations provide that detaining noncitizens is generally permissible only upon notice to the noncitizen and after an individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8

C.F.R. § 241.4(d), (f), (h) & (k).

106. Respondents are not permitted to detain Mr. Yang on the basis of his prior order of removal and without establishing to a neutral adjudicator, by clear and convincing evidence, that his removal is reasonably foreseeable and that he is a danger to the community or a flight risk. This is especially true where, as here, Mr. Yang received a determination from the agency in January 2018 when it issued him a Form I-220B and permitted him to remain out of custody in the first place. 8 C.F.R. § 241.13(i)(2)-(3).

FIFTH CAUSE OF ACTION

Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third Country Removal

U.S. Const. amend. V

107. Mr. Yang re-alleges and incorporates herein by reference, as if set forth fully herein, the allegations in all the preceding paragraphs.

108. The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing.").

109. Mr. Yang has a protected interest in his life. Thus, prior to any third country removal, he must be provided with constitutionally compliant notice and an opportunity to respond and contest that removal if he has a fear of persecution or torture in that country.

110. For these reasons, Mr. Yang's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate his due process rights. The only remedy of this violation is for this Court to order that he not be summarily removed to any third country unless and until he is provided constitutionally adequate procedures.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Enjoin ICE from re-arresting Mr. Yang unless and until a hearing can be held before a neutral adjudicator to determine whether his re-incarceration would be lawful because the government has shown that his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence;

a. At any such hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk established by the government;

(3) Declare that Petitioner cannot be re-arrested unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that his removal is reasonably foreseeable and that he is a danger or a flight risk by clear and convincing evidence;

a. At any such hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to detention exist to mitigate any risk established by the government;

(4) Order that Mr. Yang cannot be removed to any third country without first being provided constitutionally compliant procedures, including:

a. Written notice to Mr. Yang and counsel of the third country to which he may be removed, in a language that Mr. Yang can understand, provided at least twenty-one (21) days before any such removal;

b. A meaningful opportunity for Mr. Yang to raise a fear of return for eligibility for protection under the Convention Against Torture, including a reasonable fear interview before a DHS officer;

c. If Mr. Yang demonstrates a reasonable fear during the interview, DHS must move to reopen his underlying removal proceedings so that he may apply for relief under the Convention Against Torture;

d. If it is found that Mr. Yang does not demonstrate a reasonable fear during the interview, a meaningful opportunity, and a minimum of fifteen (15) days, for Mr. Yang to seek to move to reopen his underlying removal proceedings to challenge potential third country removal;

(5) Award reasonable costs and attorney fees; and

(6) Grant such further relief as the Court deems just and proper.

Dated: July 28, 2025

Respectfully submitted,

/s/ Johnny Sinodis
Johnny Sinodis
Marc Van Der Hout
Oona Cahill

Attorneys for Mr. Yang

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Mr. Yang because I am one of his attorneys. I have discussed with Mr. Yang the events described in the Petition and Complaint. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Executed on this July 28, 2025, in San Francisco, California.

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Mr. Yang