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Zhiyu YANG

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-06323

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner-Plaintiff hereby moves this Court for an order enjoining Respondents-Defendants U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-arresting Petitioner-Plaintiff Zhiyu Yang until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because (1) his removal from the United States is reasonably foreseeable and (2) there is clear and convincing evidence establishing that he is a danger to the community or a flight risk. Mr. Yang additionally seeks to enjoin Respondents from removing him from the United States to any third country to which he does not have a removal order (i.e., any other country other than China) without first providing him constitutionally compliant procedures.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the Declaration of Johnny Sinodis with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Mr. Yang raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

WHEREFORE, Mr. Yang prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-incarcerating him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his re-incarceration would be lawful. Mr. Yang is currently scheduled to appear for an check-in before the San Francisco ICE Field Office on July 31, 2025, where Respondents likely intend to re-arrest and re-incarcerate even though (1) his removal is not reasonably foreseeable and (2) he is not a flight risk or danger to the community. Mr. Yang further requests the Court

to grant a temporary restraining order and a preliminary injunction enjoining Respondents from removing him to any third country without first providing him with constitutionally compliant procedures. The only mechanism to ensure that he is not unlawfully re-arrested and removed to a third country in violation of the Immigration and Nationality Act (INA) and his right to due process is an ex-parte temporary restraining order from this Court.

Dated: July 29, 2025

Respectfully Submitted

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

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I. INTRODUCTION

Petitioner-Plaintiff Zhiyu Yang, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's (DHS), U.S. Immigration and Customs Enforcement (ICE) from re-arresting him unless and until he is afforded notice and a hearing before a neutral decisionmaker on the question of whether his release should be revoked and, if so, whether he must be re-incarcerated because ICE establishes by clear and convincing evidence that (1) his removal is reasonably foreseeable and (2) he is a danger to the community or a flight risk. At any such hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to detention would mitigate any risk established by Respondents. Finally, Mr. Yang asks the Court to enjoin Respondents from removing him to any third country (i.e., any country other than China) without first providing him with constitutionally compliant procedures.

Mr. Yang is a Chinese refugee who has lived in the United States, first as an asylee and then as a lawful permanent resident (i.e., a green card holder), since 2011. Although an Immigration Judge (IJ) ordered his removal in January 2017, ICE released him from custody in January 2018—pursuant to a Form I-220B, Order of Supervision—because the agency could not effectuate his removal to China, a country which has historically not issued travel documents to its citizens who have been ordered removed from the United States. Mr. Yang has never been ordered removed to any third country or notified of such potential removal, even though ICE is currently removing noncitizens to third countries pursuant to a policy that purports to allow the agency to do so without affording the noncitizen any prior notice or procedure for contesting their removal to a country they have never known.

Mr. Yang's removal order to China is predicated on his conviction pursuant to California Penal Code (PC) § 273.5, for which he received a sentence of two years in prison. Importantly, prior to entering his plea, Mr. Yang's criminal defense attorney failed to advise him of the clear and severe immigration consequences of a PC § 273.5 conviction, in dereliction of his duty to provide effective assistance of counsel. Mr. Yang has already consulted with a criminal defense attorney who will be assisting him to pursue post-conviction relief which, if granted, would enable

him to reopen his removal proceedings and restore his lawful permanent resident status.

Mr. Yang is scheduled to attend a check-in at the San Francisco ICE Field Office on July 31, 2025. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins[1]—including undersigned Counsel's knowledge of similarly situated clients of his firm who were re-arrested and re-incarcerated without any notice or process—undersigned Counsel contacted Respondents' counsel to request that ICE provide assurances that it would not re-arrest Mr. Yang at his check-in. ICE refused to provide assurances.

Given that ICE has declined to provide assurances that it will not re-arrest Mr. Yang, in conjunction with the numerous credible reports of similarly situated noncitizens being arrested at ICE check-in appointments—as well as undersigned Counsel's own knowledge that similarly situated clients of his firm were re-arrested and re-incarcerated without any notice or process at a routine check-in—it is highly likely Mr. Yang will be arrested and incarcerated at his July 31 appointment, despite the fact that his removal is not reasonably foreseeable and he is neither a flight risk nor a danger to the community. This is particularly true given that ICE has received multiple directives to meet untenable daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary.[2] If Mr. Yang is arrested, he faces the very real possibility of being transferred outside of California with little or no notice, far away from his family and community and quite possibly to a third country to which he has absolutely no connection whatsoever.

As a result of these circumstances, Mr. Yang presents several ways in which his-rearrest would be unlawful and must be enjoined, and also requests an injunction against any removal to

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[1] *See, e.g.*, "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. See also

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

a third country in this matter that ICE intends to effect:

First, when a noncitizen like Mr. Yang has been released from custody pursuant to a Form I-220B, Order of Supervision, because removal to their country of origin is not possible, their re-detention is limited by regulation, statute, and the constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention is further limited by the Due Process Clause of the Fifth Amendment because it is well-established that individuals released from incarceration have a liberty interest in their freedom. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Yang's detention was *already* found to be unnecessary to serve its purpose. ICE previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify his re-arrest. Accordingly, *prior to any re-arrest*, Mr. Yang must be provided notice and a hearing before a neutral arbiter at which ICE bears the burden of justifying his re-incarceration is required because clear and convincing evidence exists to demonstrate that his (1) removal is reasonably foreseeable and (2) he is a flight risk or a danger to the community. During any such hearing, Mr. Yang must be afforded the opportunity to present arguments as to why he should not be re-arrested and re-incarcerated, and the neutral arbiter must consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk established by ICE.

Second, the Supreme Court of the United States has limited the potentially indefinite post-removal order detention to a *maximum* of six months where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In this instance, Mr. Yang has already spent a year in custody following his order of removal; although he was ordered removed by an IJ on January 31, 2017, ICE did not release him from custody until January 19, 2018. Given that China historically has not issued travel documents to its citizens who have been ordered removed from the United States, and because ICE does not have a travel document for Mr. Yang now, his removal remains not reasonably foreseeable. Therefore, any re-arrest would lead to indefinite and

thus unconstitutionally prolonged detention.

Mr. Yang meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm stemming from any unlawful re-arrest absent an order from this Court enjoining the government from re-arresting him unless and until he receives a hearing before a neutral arbiter where the government must bear the burden by clear and convincing evidence to show that (1) his removal is reasonably foreseeable and (2) he is a flight risk or danger to the community. Mr. Yang would also suffer immediate and irreparable harm if removed to a third country where his life could be in danger. For that reason, he also seeks an order enjoining Respondents from removing him to any third country without first being provided with constitutionally compliant procedures providing him adequate notice and an opportunity to demonstrate if his life is in danger or he stands a risk of torture—all of which are demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Yang is citizen and national of China who is the father of two U.S. citizen daughters, one of whom is twenty-four years old and the other eleven. He currently lives in the Bay Area, California, and works as a contractor for Tesla. ECF 1-1, Declaration of Johnny Sinodis (Sinodis Decl.).

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, the U.S. Citizenship and Immigration Services (USCIS) granted Mr. Yang asylum. *Id.* at Ex. A (Asylum Approval). 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). *Id.* at Ex. B (Evidence of Lawful Permanent Resident Status).

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.

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 binding California case 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 would cause Mr. Yang to lose his green card, and it would also render him ineligible for nearly all defenses to removal. 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).

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.*

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."). 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.

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). Then, on January 19, 2018, ICE released Mr. Yang from detention pursuant to an OSUP. Sinodis Decl. at Ex. D (Notice of Decision to Release); *see also id.* at Ex. E (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 United States 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.*

For more than seven years, Mr. Yang has remained in full compliance with his OSUP and 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. at Ex. H (Letter of Support from U.S. Citizen Daughter); *see also id.* at Ex. I (Letter from Dr. Sue Chan). He is not at all the type of person for whom re-incarceration is required.

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 Ex. G (OSUP).

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.[3] Multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the Sacramento Area, San Francisco Bay Area, Los

[3] *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/.

Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[4]

In recent months, ICE has also 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.[5] 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 v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *2 (N.D.Cal. July 26, 2025) ("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 v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *7 (E.D.Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.Cal. July 16, 2025); *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

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[4] *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.

[5] *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 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).

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).

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.*

In light of credible reports of ICE re-incarcerating individuals at their check-ins and the fact that ICE will not provide 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.

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)

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.

III. LEGAL STANDARD

Mr. Yang is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest."

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. Yang does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Yang overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MR. YANG WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Yang is likely to be re-arrested absent any material change in circumstances and prior to receiving a hearing before a neutral adjudicator, in violation of his due process rights, without intervention by this Court. Mr. Yang will continue suffer irreparable injury if he is arrested and detained without due process and separated from his U.S. citizen children and community.

Mr. Yang is likely to succeed on the merits of claims set forth below. Any re-arrest absent notice and a hearing under the circumstances of this case—where ICE has not established that removal is reasonably foreseeable and that Mr. Yang is a flight risk or danger—would be a clear violation of the INA, its implementing regulations, and due process. Alternatively, Mr. Yang at least raises "serious questions" going to the merits of his claims and establishes that the balance of hardships tips "sharply" in his favor, as detailed below.

Moreover, the Court should enjoin removal to a third country other than China without constitutionally required procedures, because Mr. Yang is likely to succeed on the merits of that claim or, at a minimum, raises "serious questions" going to the merits of that claim and shown

that the balance of hardships tips "sharply" in his favor.

1. Mr. Yang is likely to succeed on the merits of his claim that any re-detention would be indefinite and thus unconstitutional, in violation of clear Supreme Court precedent.

Mr. Yang is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-detaining him because he cannot be deported to China and he would therefore be subjected to unconstitutional indefinite detention.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) 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).

ICE did in fact detain Mr. Yang during that removal period, following his administratively final order of removal. Following the IJ's removal order on January 21, 2017, Mr. Yang remained in ICE custody for another year, until January 18, 2018. Sinodis Decl. at Exs. D-F. During that entire removal period, ICE was not able to remove him to China.

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 v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

The Supreme Court has addressed the statute's silence regarding the limits on post-final

order detention, and has definitively held that such detention has the potential to be indefinite and such indefinite detention would be unconstitutional. Thus, there must be constitutional limits on post-final order detention. Specifically, the Supreme Court held that 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-month period, if a detainee provides "good reason" to believe that his or her 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.

In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, if 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, under the Supreme Court's constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas*, 533 U.S. at 701.

In this case. Mr. Yang was released from ICE detention after the conclusion of the removal period, specifically because his removal was not foreseeable at all. Sinodis Decl. at Ex. E. And nothing has changed since his release in January 2018. If ICE is permitted re-detain him now, under the possibility he might be removed some day simply because he has a removal order, then he very likely will be detained in ICE custody essentially forever.

Here, Mr. Yang's re-detention would be unconstitutional because it would be indefinite. China has historically not issued travel documents to its citizens who have been ordered removed from the United States.[6] And there is no evidence that China will agree to take him now. Respondents have acknowledged in cases with similarly-situated petitioners that they did not obtain travel documents before arresting the noncitizen. *Hoac*, No. 2:25-CV-01740-DC-JDP,

[6] *See, e.g.*, "Exclusive - U.S. to China: Take back your undocumented immigrants," *Reuters* (Sept. 10, 2015), https://www.reuters.com/article/world/exclusive-us-to-china-take-back-your-undocumented-immigrants-idUSKCN0RB0D0/.

2025 WL 1993771, at *1 (government had no travel document for petitioner); *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (same). Thus, Mr. Yang's 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. His re-incarceration without any reasonably foreseeable end point would thus be unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* Moreover, Mr. Yang has already served more than one-year of post-order detention before he was released in January 2018, and therefore he may—and under these circumstances, must—not be re-detained. 8 C.F.R. § 241.13(b)(1); *see also 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;*Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *1; *Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (ordering release from physical custody under *Zadvydas*); *Tadros v. Noem*, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025) (same).

2. Mr. Yang is likely to succeed on the merits of his claim that any re-arrest would be a violation of the regulations.

Mr. Yang's re-arrest would be separately unlawful because the controlling regulations specify the circumstances that permit his re-incarceration, and Respondents have not established that circumstances have changed regarding the foreseeability of his removal which is required under those regulations.

By regulation, non-citizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an order of supervision, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

In this case, Mr. Yang was released on a Form I-220B, Order of Supervision, in January 2018. Sinodis Decl. at Ex. F. It specified the conditions imposed on him, and it is uncontested that he complied with all of those conditions. *Id.*

Under the regulations, ICE has the authority to re-arrest a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of

release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). Neither criteria is met here, as Mr. Yang has fully complied with his Form I-220B and there is no evidence that China has issued a travel document for him. Any re-arrest would therefore be unlawful.

3. Mr. Yang is Likely to Succeed on the Merits of His Claim That in This Case the Constitution Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration by ICE

Mr. Yang is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-arresting him without first providing a pre-deprivation hearing before a neutral adjudicator where the government shows that his removal is reasonably foreseeable and demonstrates by clear and convincing evidence that there has been a material change in circumstances such that he is now a danger or a flight risk.

ICE's power to re-arrest a noncitizen who is at liberty is constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). It is well-established that individuals released from incarceration have a liberty interest in their freedom. *See 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"). 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 must be afforded the opportunity to advance his arguments as to why he should not be re-detained. Other courts in this District and in the Eastern District of California have agreed. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025)

(temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) (enjoining ICE from re-detaining Petitioner absent notice and a hearing); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025); *Ortega v. Kaiser*, No. 25-cv-05259, 2025 WL 1771438, *6 (N.D. Cal. June 26, 2025); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest);. *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *1 (N.D.Cal. July 26, 2025); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7 (E.D.Cal. July 16, 2025); *Guillermo M.R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 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

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Mr. Yang Has a Protected Liberty Interest in His Release

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.

Since January 2018, Mr. Yang exercised that freedom under ICE's Form I-220B, Order of Supervision. Sinodis Decl. at Ex. 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").

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 that actually permits Mr. Yang's removal to China, his removal is not foreseeable at all, let alone reasonably. Therefore, his re-incarceration would be unconstitutional.

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 at regular intervals, which he did. *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)). For the past seven years, he was also gainfully employed and worked hard to reconnect with loved ones. Sinodis Decl. at Exs. H-I.

Individuals—*including noncitizens*—released from incarceration have a liberty interest in their freedom. *Id.* at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that "[i]t is well-established that the due process clause applies to protect immigrants"). This is further reinforced by *Morrissey*, where the Supreme Court recognized the protect liberty interest under the Due Process Clause of a criminal detainee who was released on parole from incarceration. 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.

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).

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

Here, when this Court "'compar[es] the specific conditional release in [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. And, unlike in these Supreme Court cases, Mr. Yang is not a criminal detainee but a civil detainee and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context. "[D]ecisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody]," who are "most decidedly entitled to *more* considerate treatment than those who are criminally detained." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016) *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added).

Mr. Yang has complied with all conditions of release for over seven years. During that time, he has focused on rebuilding his life, including by reconnecting with family and securing employment. He also 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.[7] Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention.

b. Mr. Yang's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Release

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 which, if granted, would enable him to

[7] 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 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).

reopen his removal proceedings and restore his lawful permanent resident 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.

"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)).

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

Because, in this case, the provision of a pre-deprivation hearing 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 [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

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

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like 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.

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 order 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). 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.

ii. 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 is Minimal

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 him unless and until the government demonstrates by clear and convincing evidence that (1) his removal is reasonably foreseeable and (2) 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 order of release should be revoked because the government can demonstrate not only that his removal is reasonably foreseeable but that he is also a danger or a flight risk—is a standard course of action for the government. Providing Mr. Yang with a hearing before this Court (or a neutral decisionmaker) would impose only a *de minimis* burden on the government, because the government routinely provides this sort of review to individuals like Mr. Yang. 8 C.F.R. § 241.4(e)-(f).

As 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. In this case, the government cannot plausibly assert that it has any basis for

detaining Mr. Yang in July 2025 when he has lived at liberty complying with the conditions of his release since January 2018 and circumstances have not changed since then.

In fact, Mr. Yang has always had a removal order since his release from ICE custody in January 2018 and has demonstrated that he is not a flight risk because he has continued to appear before ICE on a regular basis for every appointment that 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).

As to flight risk, 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 remains likely to present himself at any future ICE appearances, as he always has done. *Zadvydas*, 533 U.S. at 699 (ICE's interest is to "assure [Mr. Yang's] presence at the moment of removal."). The government's interest in detaining Petitioner 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.[8] *See* Zakzouk, No. 25-CV-06254 (RFL), 2025 WL 2097470, *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.'"); *Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("The law requires a change in relevant

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

facts, not just a change in [the government's] attitude") (internal quotations omitted).

Moreover, the "fiscal and administrative burdens" that a pre-deprivation 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 review regarding whether his release should be revoked and whether he should be re-incarcerated.

In the alternative, providing Mr. Yang with a hearing before this Court (or a neutral decisionmaker) 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 his release to be revoked. But there is no justifiable reason to re-incarcerate Mr. Yang 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.

Enjoining Mr. Yang's re-arrest until ICE (1) moves for a re-determination before a neutral decisionmaker and (2) demonstrates by clear and convincing evidence that Mr. Yang's removal is reasonably foreseeable and that he is a flight risk or danger to the community 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.

iii. 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

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 his removal is reasonably foreseeable and he is a danger to the community or a flight risk.

Under ICE's process for custody determination—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 revoke a release determination without oversight of any kind—even if, as here, the individual has been living at liberty for years and no circumstances justify their arrest. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner without a bond, or grant him release again. 8 C.F.R. § 241.4(e)-(f).

By contrast, the procedure Mr. Yang seeks—a hearing in front of a neutral adjudicator at which the government must prove that his re-incarceration would not be indefinite and clear and convincing evidence shows that circumstances have changed to justify his detention *before* any re-arrest—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).

Due process also requires consideration of alternatives to detention at any custody redetermination 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 Mr. Yang's re-incarceration is warranted.

4. Mr. Yang is likely to succeed on the merits of his claim that he is entitled to constitutionally adequate procedures prior to any third country removal.

Finally, Mr. Yang is likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures—including notice and an opportunity to respond and apply for fear-based relief—prior to being removed to any third country.

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).

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). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

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.[9] Currently,

[9] 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.

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. Sinodis Decl. at Ex. J (Copy of DHS Policy). Instead, the policy squarely violates the INA because it does not take into account, *or even mention*, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii).

Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it purports to allow DHS to provide individuals with *no notice whatsoever* prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." *Id.* If, in turn, the country has not provided such an assurance, then DHS officers must simply inform an individual of removal to that third country but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention Against Torture. *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within twenty-four hours after an individual states a fear of removal to a recently designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal"—which is the standard for protection under the Convention Against Torture that IJs apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then be removed to the third country to which they claimed, and tried to demonstrate within twenty-four hours, a fear of persecution or torture. *Id.*

Finally, there is no indication that any of this process will occur in an individual's native language. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention Against Torture—which is a treaty that binds the United States *government*—instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with *DHS's obligations* under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries *without any notice or an opportunity to be heard* if that country merely promises that deportees will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.* Multiple district courts have already found this policy cannot be constitutionally applied to individual petitioners. *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. 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. 25-cv-1475 (C.D. Cal. June 25, 2025); *Ortega v. Kaiser*, No. 25-cv-5259, 2025 WL 1771438, *6 (N.D. Cal. June 26, 2025). (TRO prohibiting the government from removing petitioner to "any third country in the world absent prior approval from this Court").

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. *D.V.D., et al.* v. *U.S. Department of Homeland Security, et al.*, 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*, No. 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 the nature, and not the substance, of the nationwide preliminary injunction.[10] This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. --- (2025), where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever—in violation of individuals' due process rights.[11]

Mr. Yang's removal to a third country would violate his due process rights unless he is *first* provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Intervention by this Court is necessary to protect those rights.

* * *

As the above-cited authorities show, Mr. Yang is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-arrest and re-incarceration by ICE. Alternatively, at the very least, he clearly raises "serious questions" regarding this issue, thus also meriting a TRO pursuant to the Ninth Circuit's sliding-scale approach. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

5.Mr. Yang will Suffer Irreparable Harm Absent Injunctive Relief

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[10] The Supreme Court's July 3, 2025, order in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, 606 U. S. ____ (2025) (2025) further reinforces that the Supreme Court only disagrees with the means of a nationwide injunction, and not the underlying substance of the nationwide injunction. There, the Court held that the stay of the preliminary injunction divests remedial orders stemming from that injunction of enforceability, and cited to *United States v. Mine Workers*, 330 U. S. 258, 303 (1947) for the proposition that: "The right to remedial relief falls with an injunction which events prove was erroneously issued and *a fortiori* when the injunction or restraining order was beyond the jurisdiction of the court." *Id.* In any event, the remedial order at issue involved six individuals who had *already been removed* from the United States to a third country, and is therefore distinct from this case, where Mr. Yang remains in the United States and there is no question this Court continues to have jurisdiction over his case.

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

Mr. Yang will suffer irreparable harm were he to be deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[12]

Mr. Yang has been out of ICE custody for over seven years. During that time, he has worked hard to establish a stable life for himself and his family. Sinodis Decl. He has been gainfully employed as contractor for Tesla and he has also volunteered his time at Asian Health Services in Oakland, California. *Id.* at Ex. I (Letter of Support from Dr. Chan). If he were incarcerated, he would likely lose his job and his residence, as he could not work or pay his bills from detention. Detention would irreparably harm not only Mr. Yang, but also his community.

Further, Mr. Yang will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally compliant procedures to ensure that his right to

[12] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed June 27, 2025).

apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[13] Others removed in violation of their prior grant of protection under the Convention Against Torture have reported that they faced severe torture at the hands of government agents.[14]

It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Yang from suffering irreparable harm by remaining in unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

6. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

First, the balance of hardships strongly favors Mr. Yang. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring DHS to refrain from re-arresting Mr. Yang unless and until he is provided a hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the

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[13] NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home.

[14] NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture.

requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Yang in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Yang warrants a temporary restraining order and a preliminary injunction ordering that Respondents refrain from re-arresting him unless and until he is afforded a hearing before a neutral adjudicator on whether revocation of his release is justified by clear and convincing evidence that (1) his removal is reasonably foreseeable and (2) that he is a danger to the community or a flight risk. He further merits a temporary restraining order and a preliminary injunction preventing ICE from removing him to a third country without first providing him with constitutionally compliant procedures.

Dated: July 29, 2025

Respectfully submitted,

/s/ Johnny Sinodis
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