

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DABONA TANG,)	No. CV25-1473-RAJ-TLF
)	
Petitioner,)	
)	MOTION FOR PRELIMINARY
v.)	INJUNCTION
)	
PAMELA BONDI, Attorney General of)	Note on Motion Calendar:
the United States; <i>et al.</i> ,)	September 26, 2025
)	
Respondents.)	

Petitioner Dabona Tang moves this Honorable Court for a preliminary injunction requiring the Respondents to release him from custody and barring future arrest or detention by the Respondents absent leave of this Court. In support of this Motion, counsel states as follows:

I. INTRODUCTION

Mr. Tang was released from custody on his own recognizance in 2011 after Immigration and Customs Enforcement (“ICE”) determined that he could not be deported to either the Philippines (where he was born in a refugee camp) or Vietnam (the country his parents fled). Except for a misdemeanor conviction in 2004 which Mr. Tang resolved with a fine, classes, and informal probation, he has complied with every order of supervision for fourteen years. Ex. 1 (Declaration of Dabona Tang). ICE did not move to revoke Mr. Tang’s supervision conditions after his misdemeanor conviction and has not increased his supervision requirements at any time in the last eleven years.

1 Nonetheless, in May 2025, ICE arrested Mr. Tang when he appeared with his
2 lawyer for his scheduled check-in. That re-arrest was based on a change in policy, not
3 on any change in circumstances indicating Mr. Tang presents an increased likelihood of
4 flight or risk of dangerousness, and not because Mr. Tang’s removal to Vietnam is
5 substantially likely in the reasonably foreseeable future. *Id.* Indeed, Respondents’
6 pleadings suggest they have not even requested a travel document from Vietnam. ICE
7 has never argued that Mr. Tang is a flight risk or danger to the community.

8 Mr. Tang’s re-detention without cause or process violates: (1) his substantive
9 due process rights because there is no legitimate interest in his detention without an
10 individualized determination that he poses a flight risk or a danger to the community;
11 (2) his procedural due process rights because he was not given notice that he would be
12 arrested or an opportunity to address the allegations which Respondents now allege
13 justify his jailing; and (3) *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the
14 Administrative Procedure Act (APA) because the agency decision to detain him is not
15 based on any individualized assessment of the likelihood of his removal to Vietnam.

16 Mr. Tang faces irreparable harm unless this Court intervenes. He respectfully
17 asks this Court to order his immediate release.

18 **II. BACKGROUND FACTS AND PROCEDURAL HISTORY**

19 **A. Background**

20 Mr. Tang was born in a refugee camp in the Philippines after his parents fled the
21 war in Vietnam. Ex. 1. He entered the United States as an infant in 1981. In 1983, the
22 former Immigration and Naturalization Service adjusted Mr. Tang’s status to Lawful
23 Permanent Resident. *See* Ex. 2 (Notice of Adjustment of Status). That document
24 identifies Mr. Tang’s nationality as “stateless.” *Id.*¹

25 ¹ Deportation Officer Rodriguez’s declaration asserts that Mr. Tang “is not considered
26 stateless.” Dkt. 13 at 2. The officer does not explain how he came to that conclusion,
which is contrary to Service records. Also, regardless of whether Respondents

1 In 2009, Mr. Tang was convicted of Conspiracy to Possess with Intent to
2 Distribute MDMA and sentenced to 12 months' confinement and 12 months' home
3 detention. *See* Dkt. 13 at 2. When he was released from custody, ICE took Mr. Tang
4 into custody for being removable under 8 U.S.C. § 1227(a)(2)(A)(iii) based on his
5 aggravated felony. An immigration judge ordered Mr. Tang removed on February 17,
6 2011, but Vietnam refused to accept him. *Id.* After months in immigration detention,
7 ICE released Mr. Tang pursuant to an order of supervision. *Id.*

8 Mr. Tang's supervision thus began fourteen years ago, on August 19, 2011. In
9 2014, Mr. Tang sustained a misdemeanor conviction driving with an elevated blood
10 alcohol level.² *See* Ex. 3 (Conviction Records). He resolved that case by taking classes,
11 paying a fine, and serving three years of informal probation. *Id.* Then, for 11 years,
12 Mr. Tang complied with his release conditions in every respect. Ex. 1. Respondents did
13 not revoke his release or further restrict his release conditions. Indeed, Respondents
14 have never argued that the 11-year-old misdemeanor conviction renders Mr. Tang a
15 danger or flight risk.

16 **B. Change in policy**

17 On January 20, 2025, President Trump issued an Executive Order titled
18 "Protecting the American People Against Invasion." Exec. Order No. 14159, 90 Fed.
19 Reg. 8443–48 (Jan. 20, 2025). This Executive Order directs the Secretary of Homeland
20 Security to "promptly take action to use all other provisions of the immigration laws or
21 any other federal law, including but not limited to sections 238 and 240(d) of the INA
22 (8 U.S.C. 1228 and 1229a(d)), to ensure the efficient and expedited removal of aliens

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24 "consider" Mr. Tang a Vietnamese citizen, there is no evidence that Vietnam
recognizes Mr. Tang as its citizen.

25 ² Officer Rodriguez correctly identifies Cal. Veh. Code § 23152(b) as the code section
26 for Mr. Tang's misdemeanor conviction, but incorrectly states that he was convicted of
Driving Under the Influence—a more serious crime located in § 23152(a). *See* Dkt. 13.

1 from the United States.” *Id.* at Sec. 9. The Executive Order also instructs the Secretary
2 of Homeland Security to “take all appropriate actions to ensure the detention of aliens
3 apprehended for violations of immigration law pending the outcome of their removal
4 proceedings or their removal from the country, to the extent permitted by law.” *Id.* at
5 Sec. 10.

6 On May 5, 2025, Respondent Homeland Security Secretary Noem issued a press
7 release claiming, “Secretary Noem is fulfilling President Trump’s promise to carry out
8 mass deportations.” U.S. Dep’t of Homeland Security, *100 Days of Secretary Noem:
9 Making America Safe Again* (May 5, 2025), [https://www.dhs.gov/news/2025/05](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again)
10 [/05/100-days-secretary-noem-making-america-safe-again](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again) [[https://perma.cc/MGG8-](https://perma.cc/MGG8-H7TJ)
11 [H7TJ](https://perma.cc/MGG8-H7TJ)]. On the day of Mr. Tang’s arrest, news outlets reported that during a May 21,
12 2025, meeting at the White House with ICE officials, Stephen Miller, White House
13 Deputy Chief of Staff, and Respondent Noem “expressed their frustrations with the
14 current level of arrests to ICE leadership” and “reportedly demanded that ICE triple
15 daily arrest totals to 3,000 per day.” Victor Nava, *ICE shakes up leadership amid push
16 for 3,000 migrant arrests per day*, N.Y. Post (May 29, 2025),
17 [https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-migrant-arrests-per-day)
18 [migrant-arrests-per-day](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-3000-migrant-arrests-per-day) [<https://perma.cc/Y9Z2-AKW7>]. Miller himself repeated the
19 call for “a minimum” of 3,000 immigration arrests a day on Fox News on May 29,
20 2025. Fox News, *Stephen Miller reveals Trump admin’s ‘daily goal’ for illegal migrant
21 arrests*, at 00:20 (YouTube, May 29, 2025), [https://www.youtube.com/watch?](https://www.youtube.com/watch?v=MJNXsOqFSZs)
22 [v=MJNXsOqFSZs](https://www.youtube.com/watch?v=MJNXsOqFSZs).

23 Respondents responded to the Administration’s demand to increase arrests by
24 detaining people who were in compliance with their supervision when they appeared
25 for their court hearings or supervision check-ins. Although Respondents have not
26 disclosed the number of people re-arrested pursuant to this change in policy, district

1 courts have ordered release of people rearrested without cause at least 29 times since
 2 May.³ Despite these dozens of orders, Respondents have not voluntarily released
 3 similarly situated respondents or abated the practice of arresting people who pose no
 4 risk of flight or danger without notice. Instead, Respondents have adopted a policy of

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 6 ³ *Nguyen v. Scott*, No. CV25-01398, 2025 WL 2419288, at *1 (W.D. Wash. Aug. 21,
 7 2025) (granting preliminary injunction to Vietnamese refugee on *Zadvydas*/due process
 8 grounds); *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL 1725791, *4 (D. Mass.
 9 June 20, 2025) (same; evidence of increased removals to Vietnam insufficient to justify
 10 detention); *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *1
 11 (W.D. Wash. Aug. 19, 2025) (re-arrest violated due process); *Calderon v. Kaiser*, No.
 12 CV25-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (same); *Arias*
 13 *Gudino v. Lowe*, --- F.Supp.3d ----, 2025 WL 1162488 (M.D. Pa. Apr. 21, 2025)
 14 (same); *Arzate v. Andrews*, No. CV25-00942-KES-SKO (HC), 2025 WL 2230521
 15 (E.D. Cal. Aug. 4, 2025); *Lopez Benitez v. Francis*, No. CV25-5937-DEH, 2025 WL
 16 2371588, at *1 (S.D.N.Y. Aug. 13, 2025) (same); *Ceesay v. Kurzdorfer*, --- F.Supp.3d -
 17 ---, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) (same); *Chipantiza-Sisalema v.*
 18 *Francis*, No. CV25-5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (same);
 19 *Domingo v. Kaiser*, No. CV25-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14,
 20 2025) (same); *Dos Santos v. Noem*, No. CV25-12052, 2025 WL 2370988 (D. Mass.
 21 Aug. 14, 2025) (same); *Garcia v. Andrews*, No. CV25-01884-TLN-SCR, 2025 WL
 22 1927596 (E.D. Cal. July 14, 2025) (same); *Gomes v. Hyde*, CV25-11571-JEK, 2025
 23 WL 1869299, at *5 (D. Mass. July 7, 2025) (Respondents violated Administrative
 24 Procedures Act); *Guillermo M. R. v. Kaiser*, 2025 WL 1983677 (N.D. Cal July 17,
 25 2025) (Respondents violated due process); *Maldonado v. Olson et al*, No. CV25-3142,
 26 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (same); *M'Bagoyi v. Barr*, 423 F. Supp.
 3d 99 (M.D. Penn. 2019); *Maklad v. Murray*, No. CV25-00946 JLT SAB, 2025 WL
 2299376 (E.D. Cal. Aug. 8, 2025); *Martinez v. Hyde*, No. CV25-11613, 2025 WL
 2084238 (D. Mass. July 24, 2025); *Mata Velasquez v. Kurzdorfer*, CV25-493-LJV,
 2025 WL 1953796 (W.D.N.Y. July 16, 2025); *Morales Jimenez v. Bostock*, CV25-
 00570-MTK (D. Or. May 13, 2025); *OJM v. Bostock*, CV25-00944-AB (D. Or. July 14,
 2025); *Ortega v. Kaiser*, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025); *Pablo Sequen v.*
Kaiser, --- F.Supp.3d ----, 2025 WL 2203419 (N.D. Cal. Aug. 1, 2025) ; *Pinchi v.*
Noem, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Ramirez-Clavijo v. Kaiser*, No.
 CV25-06248-BLF 2025 WL 2097467 (N.D. Cal. July 25, 2025); *Rosado v. Figueroa*,
 No. CV25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Singh v. Andrews*, 2025
 WL 1918679 (E.D. Cal. July 11, 2025); *Valdez v. Joyce*, CV25-4627-GBD, 2025 WL
 1707737 (S.D.N.Y. June 18, 2025) (granted habeas on due process grounds); *Y-Z-L-H*
v. Bostock, --- F. Supp. ---, 2025 WL 1898025 (D. Or. July 7, 2025) (re-arrest violates
 APA).

1 opposing release in all cases. *See* Ex. 4 at 86 (testimony describing policy of not
2 granting parole). This strategy forces each affected person to obtain an order from a
3 district court, a process that (as here) can delay release following unlawful arrest for
4 months and that is unavailable to people without access to counsel.

5 **C. Mr. Tang's arrest**

6 Respondents here detained Mr. Tang when he appeared with his lawyer for a
7 scheduled check-in on May 21, 2025. Ex. 1. At the time, ICE refused to state a reason
8 for Mr. Tang's arrest, except to insist to his attorney that they could re-arrest him for
9 removal to Vietnam without having first applied for travel documents. *Id.* ICE held
10 Mr. Tang in a holding tank for 14 hours, then drove him around the courthouse several
11 times and rebooked him. *Id.* Mr. Tang remained in that holding cell for about 24 hours
12 before Respondents took him to the airport to be flown to a detention facility in
13 Tacoma. *Id.*

14 In Tacoma, Mr. Tang had no further contact with any immigration officer for
15 more than two weeks. *Id.* After 16 days, Officer Hubbard brought Mr. Tang paperwork
16 that alleged for the first time that his detention was based on his 11-year-old
17 misdemeanor conviction. Officer Hubbard told Mr. Tang that ICE would detain him
18 until Respondents determined "what to do with [him]." *Id.* On August 1, 2025, a
19 different officer came with a stack of paperwork, much of it in Vietnamese and
20 therefore incomprehensible to Mr. Tang. *Id.* The same officer also asked Mr. Tang to
21 identify countries to which they would try to remove him. *Id.* At no point did either
22 Officer Hubbard or the other officer ask Mr. Tang any questions about his 11-year-old
23 misdemeanor. *Id.*

24 Removals to Vietnam of people who left that country before 1995 are currently
25 governed by a Memorandum of Understanding (MOU), in which Vietnam agrees to
26 consider for repatriation persons who satisfy certain factors. Ex. 5. Respondents will not

1 disclose those factors, but the MOU on its face applies only to people who previously
2 resided in Vietnam. *See* Memorandum of Understanding, Article 4(3) (“MPS intends to
3 issue travel documents where needed, and otherwise to accept the removal of an
4 individual subject to a final order of removal from the United States who meets all the
5 following conditions . . . : (3) Resided in Viet Nam prior to arriving in the United States
6 and currently has no right to reside in any other country or territory.”). Because
7 Mr. Tang has never resided in Vietnam, he is not removable to Vietnam pursuant to the
8 MOU. Nonetheless, Respondents argue that an uptick in removals to Vietnam provides
9 authority to re-detain all persons, including Mr. Tang, who have been ordered deported
10 to said country but subsequently released. *Nguyen* at 30.

11 More than three months have passed since Respondents re-arrested Mr. Tang. So
12 far as Respondents’ filings indicate, they have not yet requested a travel document from
13 Vietnam.

14 **D. Procedural history**

15 On August 5, 2025, Mr. Tang filed a petition pursuant to 28 U.S.C. § 2241. Dkt.
16 1. Because Local Civil Rule 7(d)(4) does not distinguish between “detainees” who
17 challenge their unlawful arrest and “detainees” who challenging the length or
18 conditions of detention, the magistrate judge issued an order setting the noting date for
19 the Court’s consideration of Mr. Tang’s claim of unlawful arrest eight weeks after his
20 petition was filed. Dkt. 6. The judge later reduced that time by one week in response to
21 Mr. Tang’s motion to expedite. Dkt. 8.

22 Respondents filed their response four days ago, on August 25, 2025. Dkt. 12.

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1 **III. MR. TANG HAS MADE THE SHOWING NECESSARY TO WARRANT**
2 **HIS IMMEDIATE RELEASE; FURTHER DELAY WOULD PROLONG**
3 **HIS UNLAWFUL DETENTION, WHICH IS NOT IN THE PUBLIC**
4 **INTEREST.**

5 The Court may provide interim legal relief when the movant establishes four
6 factors: “that he is likely to succeed on the merits, that he is likely to suffer irreparable
7 harm in the absence of preliminary relief, that the balance of equities tips in his favor,
8 and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council*,
9 555 U.S. 7, 20 (2008). The standard for granting a preliminary injunction and a
10 temporary restraining order are “substantially identical.” *Washington v. Trump*, 847
11 F.3d 1151, 1159 n.3 (9th Cir. 2017). Each factor weighs in the Mr. Tang’s favor and
12 warrants issuance of a release order.

13 **A. Mr. Tang is likely to succeed on the merits of his habeas petition**
14 **because his detention violates his substantive and procedural due**
15 **process rights and is the result of an arbitrary and capricious agency**
16 **decision, or at a minimum he has raised serious questions going to the**
17 **merits of these claims.**

18 Of the factors necessary to win interim relief, “[l]ikelihood of success on the
19 merits is a threshold inquiry and is the most important factor.” *Simon v. City & Cnty. of*
20 *San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (citation modified). Alternatively, a
21 temporary restraining order may issue on a showing that there are “serious questions
22 going to the merits—a lesser showing than likelihood of success on the merits” when
23 the “balance of hardships tips sharply in the Plaintiff’s favor, and the other two *Winter*
24 factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir.
25 2014) (citation modified). As discussed below, Mr. Tang’s petition presents, at a
26 minimum, serious questions going to the merits. And since the current briefing schedule
would require another two months of unlawful detention before this Court hears his
petition, the balance of equities tips heavily in Mr. Tang’s favor.

1 Mr. Tang is likely to succeed in his claims. ICE may not re-detain Mr. Tang
2 unless it meets its burden of showing that, based on “changed circumstances,” “there is
3 a significant likelihood that the [noncitizen] may be removed in the reasonably
4 foreseeable future,” 8 C.F.R. § 241.13(i)(2). *See Hernandez-Escalante v. Noem et al.*,
5 No. CV25-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025) (“These
6 regulations clearly indicate, upon revocation of supervised release, it is the Service’s
7 burden to show a significant likelihood that the alien may be removed.”) (collecting
8 cases). Respondents cannot meet that burden because they did not even request a travel
9 document before re-detaining Mr. Tang without notice or cause, and because Mr. Tang
10 has never been a resident of Vietnam.

11 **1. Mr. Tang is likely to succeed in his *Zadvydas* challenge.**

12 In *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the Supreme Court rejected
13 Respondents’ claim of unrestricted authority to indefinitely detain people who had been
14 ordered deported. Employing the canon of constitutional avoidance, the Court held
15 instead that the Respondents would be given six months during which removal would
16 be presumptively reasonable. *Id.* After that, if removal is not “significantly likely in the
17 reasonably foreseeable future,” Respondents are required to release the Petitioner. *Id.*

18 Mr. Tang therefore bears an initial burden of showing that “there is no
19 significant likelihood of removal in the reasonably foreseeable future.” To meet that
20 initial burden, he must show that the presumptively reasonable six-month period has
21 expired. *See Nguyen v. Scott*, No. CV25-01398, 2025 WL 2419288, at *13 (W.D.
22 Wash. Aug. 21, 2025). Also relevant to Mr. Tang’s burden is whether Respondents
23 promptly requested a travel document, *id.* at 14, or if there are any “changed
24 circumstances in Petitioner’s individual case that made his deportation more likely.” *Id.*
25 at 17. Finally, the Court looks to the factors that Vietnam appears to consider when
26 issuing a travel document, including a permanent address in Vietnam, any relatives in

1 Vietnam, any other relatives abroad, and with whom and where a repatriated
2 Vietnamese citizen will live. *Id.* at 26.

3 When these factors support Petitioner, Respondents must provide evidence
4 showing why Petitioner, specifically, is likely to meet Vietnam’s criteria for
5 repatriation. *Id.* at 33. Respondents cannot sustain their burden by showing evidence of
6 some increased deportations to Vietnam. *Id. See also Hoac v. Becerra*, No. CV25-
7 01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025) (“Respondents’
8 contention that Petitioner’s removal is reasonably foreseeable because removals to
9 Vietnam are in fact occurring is unpersuasive.”); *Nguyen v. Hyde*, No. CV25-11470-
10 MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (generalized evidence of
11 removals to Vietnam insufficient).

12 Here, Mr. Tang indisputably has met his burden of showing that there is no
13 significant likelihood of removal in the reasonably foreseeable future. Though he has
14 been detained more than the six-month presumptively reasonable period, there is no
15 evidence that Vietnam has changed its position on accepting him for removal, or that
16 Respondents have even requested a travel document. Immigration documents establish
17 that he is stateless. Even if not, he is facially ineligible for removal to Vietnam under
18 the current MOU. Last, Mr. Tang does not speak Vietnamese or have any other
19 connections to that country. He does not meet Vietnam’s known criteria for
20 repatriation.

21 Because Mr. Tang has met his initial burden, Respondents cannot re-detain
22 Mr. Tang unless they provide evidence of changed circumstances creating “a significant
23 likelihood that the [Mr. Tang] may be removed in the reasonably foreseeable future,” 8
24 C.F.R. § 241.13(i)(2). But Respondents do not even try to meet this burden. Instead,
25 Respondents simply recycle the same declaration that Judge Cartwright has already
26 found inadequate and, as in *Nguyen*, couple that with a second declaration that is “both

1 vague and conclusory.” *Nguyen*, 2025 WL 2419288, at *16. Since neither declaration
2 shows any likelihood (or contains any evidence) that Mr. Tang *specifically* is likely to
3 be removed in the reasonably foreseeable future, they do not meet their burden under
4 *Zadvydas* and the APA to justify his arrest. He is likely to succeed on these claims.

5 **2. Respondents violated procedural due process by rearresting**
6 **Mr. Tang.**

7 Mr. Tang also is likely to succeed on his argument that Respondents violated due
8 process by arresting him without any pre-deprivation process. Procedural due process
9 requires notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319,
10 333–34 (1976). To state a claim for a violation of procedural due process rights, a
11 petitioner must establish (1) a protected property or liberty interest, and (2) a denial of
12 adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th
13 Cir. 2015). The Court must also consider “the Government’s interest, including the
14 function involved and the fiscal and administrative burdens that the additional or
15 substitute procedural requirement would entail.” *Rodriguez Diaz v. Garland*, 53 F.4th
16 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

17 As Judge Evanson has explained in a recent, analogous case, allegations of
18 noncompliance with supervision are insufficient on their own to justify re-detention
19 without pre-deprivation process:

20 Petitioner’s interest in not being detained is “the most elemental of liberty
21 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). That Petitioner
22 was arrested in public, detained and transferred to a facility in a different
23 state, and remains in custody today undoubtedly deprives him of an
24 established interest in his liberty . . .

25 That the Government may believe it has a valid reason to detain Petitioner
26 does not eliminate its obligation to effectuate the detention in a manner
that comports with due process.

E.A. T.-B. v. Wamsley, No. CV25-1192-KKE, 2025 WL 2402130, at *3, 4.

1 In *E.A.T.-B.*, as here, there were strong indications that the alleged violations of
2 supervision were a pretext for a policy change favoring re-detention. But the court did
3 not decide that question: “even if Petitioner’s arrest was not pretextual and was solely
4 motivated by ICE’s realization of his [supervision] violations,” the arrest was
5 unconstitutional under *Matthews*: “the Government’s interest in re-detaining non-
6 citizens previously released without a hearing is low” absent some indication of flight
7 risk or danger. *Id.* at *5. And a pre-deprivation does not threaten the government’s
8 interest in “preventing noncitizens from remaining in the United States in violation of
9 the law, as well as in ensuring its orders are followed.” *Id.*

10 Judge Evanson’s order mirrors the reasoning of at least two dozen other federal
11 opinions. See *Kelly v. Almodovar*, CV25-6448-AT, 2025 WL 2381591 (S.D.N.Y. Aug.
12 15, 2025) (finding that “an individualized assessment of a suspect’s flight risk or
13 dangerousness” is required by 8 C.F.R. §§ 1236.1(c)(8), 236.1(c)(8), before detention,
14 and this requirement is not satisfied by a review of criminal charges); *Pinchi v. Noem*, —
15 — F. Supp. 3d —, —, No. CV25-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal.
16 July 24, 2025) (“Providing [Petitioner] with the procedural safeguard of a pre-detention
17 hearing will have significant value in helping ensure that any future detention has a
18 lawful basis.”); *Doe*, 2025 WL 691664, at *6 (“[G]iven that Petitioner was previously
19 found to not be a danger or risk of flight and the unresolved questions about the timing
20 and reliability of the new information, the risk of erroneous deprivation remains
21 high.”); *Valdez v. Joyce*, CV25-4627-GBD, 2025 WL 1707737, at *4 (S.D.N.Y. June
22 18, 2025) (“Petitioner’s re-detention without any change in circumstances or procedure
23 establishes a high risk of erroneous deprivation of his protected liberty interest.”). See
24 also cases collected at Fn. 1, *infra*. And Mr. Tang presents an even stronger case than
25 the petitioners in these cases. Mr. Tang’s only violation was comparatively minor and
26 occurred more than 11 years ago. Since that time, he has worked, raised a family, and

1 always checked in when required. There is no evidence at all that he poses a risk of
2 flight or danger or that his detention is necessary for his removal.

3 On the other hand, *Domingo v. Kaiser*, No. CV25 -05893-RFL, 2025 WL
4 1940179, at *3 (N.D. Cal. July 14, 2025) specifically describes the risk of erroneous
5 deprivation that results from using dated convictions as pretexts to rearrest:

6 As to the second factor, there is a risk of erroneous deprivation that the
7 additional procedural safeguard of a pre-detention hearing would help
8 protect against. Civil immigration detention must be “nonpunitive in
9 purpose” and bear a “reasonable relation” to the authorized statutory
10 purposes of preventing flight and danger to the community. *Zadvydas v.*
11 *Davis*, 533 U.S. at 690, 121 S.Ct. 2491. When immigration agents
12 released Petitioner-Plaintiff in 2013, they determined that he did not pose
13 a flight risk or danger to the community. *See* 8 C.F.R. § 1236(c)(8) (“Any
14 [authorized] officer ... may ... release [a noncitizen] not described in
15 section 236(c)(1) of the Act ... provided that the [noncitizen] must
16 demonstrate to the satisfaction of the officer that such release would not
17 pose a danger to property or persons, and that the [noncitizen] is likely to
18 appear for any future proceeding.”). Though the record does not specify
19 the nature of Petitioner-Plaintiff’s 2019 conviction, **it seems unlikely that
20 ICE would have allowed him to remain out on bond without any
21 supervision or additional conditions, and without ever seeking to re-
22 detain him, for six years if the conviction posed a material change in
23 circumstances.**

24 2025 WL 1940179, at *3 (emphasis added).

25 The same is true here. Since Mr. Tang complied with his conditions of
26 supervision for over a decade, the risk of erroneous deprivation of his liberty without a
pre-deprivation hearing is unjustifiably high.

3. **Mr. Tang is likely to succeed on his substantive due process claim.**

“[S]ubstantive due process prevents the government from engaging in conduct
that shocks the conscience, or interferes with rights implicit in the concept of ordered
liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “A due process violation
occurs when detention becomes punitive rather than regulatory, meaning there is no

1 regulatory purpose that can rationally be assigned to the detention or the detention
2 appears excessive in relation to its regulatory purpose.” *United States v. Torres*, 995
3 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. & Customs Enf’t.*, 704 F.
4 Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“Due process protects against immigration
5 detention that is not reasonably related to the legitimate purpose of effectuating removal
6 or protecting against danger and flight risk.”). The regulatory purpose of immigration
7 detention is to hold a person that is a flight risk or a danger to the community. *In re*
8 *Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006). And the regulations governing parole list only
9 those two factors for consideration in the release decision. 8 C.F.R. § 236.1(c)(8).
10 “[T]he government has no legitimate interest in detaining individuals who have been
11 determined not to be a danger to the community and whose appearance at future
12 immigration proceedings can be reasonably ensured by a lesser bond or alternative
13 conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

14 Mr. Tang’s re-arrest and detention therefore stripped him of liberty without any
15 legitimate countervailing government interest. Plainly, Mr. Tang’s detention is not
16 necessary either to protect the community or to assure his appearance at immigration
17 proceedings. Indeed, Respondents have never seriously argued that it is. That
18 Respondents have held Mr. Tang far from home for three months without even
19 requesting a travel document and did not notify him of the purported reason for his
20 detention until he had been incarcerated for 16 days is compelling evidence that
21 Mr. Tang’s detention is intentionally punitive. Respondents’ refusal to address
22 widespread mistreatment of detained immigrants supports that conclusion. *See Nicole*
23 *Acevedo, Hundreds of alleged human rights abuses in immigrant detention, report*
24 *finds*, NBC News (Aug. 5, 2025); Center for Human Rights, *Conditions at the*
25 *Northwest Detention Center*, University of Washington,
26 <https://jsis.washington.edu/humanrights/projects/immigrant-rights->

1 observatory/conditions-at-the-northwest-detention-center/ [https://perma.cc/QF24-
2 UR6C] (last visited Aug. 28, 2025).

3 **C. Mr. Tang has an interest in remaining at liberty; Respondents have**
4 **no legitimate interest in his detention.**

5 “Freedom from bodily restraint has always been at the core of the liberty
6 protected by the Due Process Clause from arbitrary governmental action.” *Foucha v.*
7 *Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992); *see also*
8 *Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491 (finding that a non-citizen has a liberty
9 interest “strong enough” to challenge “indefinite and potentially permanent”
10 immigration detention). “Individuals who have been released from custody, even where
11 such release is conditional, have a liberty interest in their continued liberty.” *Doe v.*
12 *Becerra*, — F. Supp. 3d —, —, No. CV25-00647-DJC-DMC, 2025 WL 691664,
13 at *5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972);
14 *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782,
15 (1973)).

16 By contrast, “the government has no legitimate interest in detaining individuals
17 who have been determined not to be a danger to the community and whose appearance
18 at future immigration proceedings can be reasonably ensured by a lesser bond or
19 alternative conditions.” *Hernandez*, 872 F.3d at 997–98.

20 **D. The balance of hardships and public interest weigh heavily in**
21 **Mr. Tang’s favor.**

22 Finally, the balance of hardships and the public interest weigh heavily in
23 Petitioner’s favor. The final two factors for a PI—the balance of hardships and public
24 interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556
25 U.S. 418, 435 (2009). “[T]he balance of hardships tips decidedly in plaintiffs’ favor”
26 when “[f]aced with such a conflict between financial concerns and preventable human

1 suffering.” *Hernandez*, 872 F.3d at 996 (citing *Lopez v. Heckler*, 713 F.2d 1432, 1437
2 (9th Cir. 1983)).

3 Here, the balance of hardships tips in Petitioner’s favor. Mr. Tang faces weighty
4 hardships: absent relief, Mr. Tang will remain detained in an indefinite and prolonged
5 state, denied his liberty, removed from his livelihood, and severed from his family and
6 community where he belongs. But “the [government] cannot reasonably assert that it is
7 harmed in any legally cognizable sense by being enjoined from constitutional
8 violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And it is always in the
9 public interest to prevent violations of the U.S. Constitution and ensure the rule of law.
10 *See Nken*, 556 U.S. at 436 (describing public interest in preventing noncitizens “from
11 being wrongfully removed, particularly to countries where they are likely to face
12 substantial harm”).

13 As in *Nguyen and Hoac*, “[t]here is nothing in the current record to suggest that
14 releasing Petitioner would impede Respondents’ ability to remove him to Vietnam if
15 the necessary travel document is obtained.” *Hoac v. Becerra*, No. CV25-01740-DC-
16 JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025). Accordingly, the balance of
17 hardships and the public interest overwhelmingly favor emergency relief to ensure
18 Mr. Tang’s freedom.⁴

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22 ⁴ Even on a purely economic theory, the balance of hardships favors Mr. Tang. *See*
23 *Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL 1993771, at *6 (E.D. Cal. July
24 16, 2025) (“[T]he Ninth Circuit has recognized that ‘[t]he costs to the public of
25 immigration detention are ‘staggering,’ and that ‘[s]upervised release programs cost
26 much less by comparison’ *Hernandez*, 872 F.3d at 996. **Government
expenditure in this case is not in the public interest in light of Petitioner’s
compliance with his OSUP, stable employment, and consistent attendance at
scheduled ICE meetings.**”) (emphasis added).

1 **IV. CONCLUSION**

2 Mr. Tang has now been in custody for three months without an opportunity to be
3 heard. He respectfully asks the Court to grant this motion for a preliminary injunction.

4 DATED this 29th day of August 2025.

5 Respectfully submitted,

6 *s/ Gregory Murphy*
7 Attorney for Dabona Tang

8 I certify this motion contains 5,081 words in compliance with the Local Civil Rules.
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