THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DABONA TANG, Petitioner, v. PAMELA BONDI, Attorney General of the United States; *et al.*, Respondents.	No. CV25-1473-RAJ-TLF MOTION FOR TEMPORARY RESTRAINING ORDER[1] Note on Motion Calendar: September 2, 2025 **ORAL ARGUMENT REQUESTED**

Petitioner Dabona Tang moves this Honorable Court for a temporary restraining order requiring the Respondents to release him from custody and barring future arrest or detention by the Respondents absent leave of this Court.[2] 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

[1] This motion is substantively identical to the Motion for a Preliminary Injunction filed on August 29, 2025. Dkt. 16. Counsel has refiled the motion as a Motion for a Temporary Restraining Order to address concerns raised in Respondents' Motion to Strike. Dkt. 17.

[2] The Court's power includes the authority to "formulate" any order necessary for "appropriate" relief. *Boumediene v. Bush*, 553 U.S. 723, 787 (2008).

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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.

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

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

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

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

A. Background

Mr. Tang was born in a refugee camp in the Philippines after his parents fled the war in Vietnam. Ex. 1. He entered the United States as an infant in 1981. In 1983, the former Immigration and Naturalization Service adjusted Mr. Tang's status to Lawful

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Permanent Resident. *See* Ex. 2 (Notice of Adjustment of Status). That document identifies Mr. Tang's nationality as "stateless." *Id.* [3]

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

Mr. Tang's supervision thus began fourteen years ago, on August 19, 2011. In 2014, Mr. Tang sustained a misdemeanor conviction driving with an elevated blood alcohol level.[4] *See* Ex. 3 (Conviction Records). He resolved that case by taking classes, paying a fine, and serving three years of informal probation. *Id.* Then, for 11 years, Mr. Tang complied with his release conditions in every respect. Ex. 1. Respondents did not revoke his release or further restrict his release conditions. Indeed, Respondents have never argued that the 11-year-old misdemeanor conviction renders Mr. Tang a danger or flight risk.

B. Change in policy

On January 20, 2025, President Trump issued an Executive Order titled "Protecting the American People Against Invasion." Exec. Order No. 14159, 90 Fed.

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[3] Deportation Officer Rodriguez's declaration asserts that Mr. Tang "is not considered 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 "consider" Mr. Tang a Vietnamese citizen, there is no evidence that Vietnam recognizes Mr. Tang as its citizen.

[4] Officer Rodriguez correctly identifies Cal. Veh. Code § 23152(b) as the code section 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.

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Reg. 8443–48 (Jan. 20, 2025). This Executive Order directs the Secretary of Homeland Security to "promptly take action to use all other provisions of the immigration laws or any other federal law, including but not limited to sections 238 and 240(d) of the INA (8 U.S.C. 1228 and 1229a(d)), to ensure the efficient and expedited removal of aliens from the United States." *Id.* at Sec. 9. The Executive Order also instructs the Secretary of Homeland Security to "take all appropriate actions to ensure the detention of aliens apprehended for violations of immigration law pending the outcome of their removal proceedings or their removal from the country, to the extent permitted by law." *Id.* at Sec. 10.

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

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Respondents responded to the Administration's demand to increase arrests by detaining people who were in compliance with their supervision when they appeared for their court hearings or supervision check-ins. Although Respondents have not disclosed the number of people re-arrested pursuant to this change in policy, district courts have ordered release of people rearrested without cause at least 29 times since May.[5] Despite these dozens of orders, Respondents have not voluntarily released

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[5] *Nguyen v. Scott*, No. CV25-01398, 2025 WL 2419288, at *1 (W.D. Wash. Aug. 21, 2025) (granting preliminary injunction to Vietnamese refugee on *Zadvydas*/due process grounds); *Nguyen v. Hyde*, No. CV25-11470-MJJ, 2025 WL 1725791, *4 (D. Mass. June 20, 2025) (same; evidence of increased removals to Vietnam insufficient to justify detention); *E.A. T.-B. v. Wamsley*, No. CV25-1192-KKE, 2025 WL 2402130, at *1 (W.D. Wash. Aug. 19, 2025) (re-arrest violated due process); *Calderon v. Kaiser*, No. CV25-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025) (same); *Arias Gudino v. Lowe*, --- F.Supp.3d ----, 2025 WL 1162488 (M.D. Pa. Apr. 21, 2025) (same); *Arzate v. Andrews*, No. CV25-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Lopez Benitez v. Francis*, No. CV25-5937-DEH, 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025) (same); *Ceesay v. Kurzdorfer*, --- F.Supp.3d ----, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) (same); *Chipantiza-Sisalema v. Francis*, No. CV25-5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (same); *Domingo v. Kaiser*, No. CV25-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025) (same); *Dos Santos v. Noem*, No. CV25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (same); *Garcia v. Andrews*, No. CV25-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025) (same); *Gomes v. Hyde*, CV25-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025) (Respondents violated Administrative Procedures Act); *Guillermo M. R. v. Kaiser*, 2025 WL 1983677 (N.D. Cal July 17, 2025) (Respondents violated due process); *Maldonado v. Olson et al*, No. CV25-3142, 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

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similarly situated respondents or abated the practice of arresting people who pose no risk of flight or danger without notice. Instead, Respondents have adopted a policy of opposing release in all cases. *See* Ex. 4 at 86 (testimony describing policy of not granting parole). This strategy forces each affected person to obtain an order from a district court, a process that (as here) can delay release following unlawful arrest for months and that is unavailable to people without access to counsel.

C. Mr. Tang's arrest

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

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

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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).

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Officer Hubbard or the other officer ask Mr. Tang any questions about his 11-year-old misdemeanor. *Id.*

Removals to Vietnam of people who left that country before 1995 are currently governed by a Memorandum of Understanding (MOU), in which Vietnam agrees to consider for repatriation persons who satisfy certain factors. Ex. 5. Respondents will not disclose those factors, but the MOU on its face applies only to people who previously resided in Vietnam. *See* Memorandum of Understanding, Article 4(3) ("MPS intends to issue travel documents where needed, and otherwise to accept the removal of an individual subject to a final order of removal from the United States who meets all the following conditions . . . : (3) Resided in Viet Nam prior to arriving in the United States and currently has no right to reside in any other country or territory."). Because Mr. Tang has never resided in Vietnam, he is not removable to Vietnam pursuant to the MOU. Nonetheless, Respondents argue that an uptick in removals to Vietnam provides authority to re-detain all persons, including Mr. Tang, who have been ordered deported to said country but subsequently released. *Nguyen* at 30.

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

D. Procedural history

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

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

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

The Court may provide interim legal relief when the movant establishes four factors: "that he is likely to succeed on the merits, that he is 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. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The standard for granting a preliminary injunction and a temporary restraining order are "substantially identical." *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Each factor weighs in the Mr. Tang's favor and warrants issuance of a release order.

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

Of the factors necessary to win interim relief, "[l]ikelihood of success on the merits is a threshold inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (citation modified). Alternatively, a temporary restraining order may issue on a showing that there are "serious questions going to the merits—a lesser showing than likelihood of success on the merits" when the "balance of hardships tips sharply in the Plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (citation modified). As discussed below, Mr. Tang's petition presents, at a 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.

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

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

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

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

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

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

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

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

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

2. Respondents violated procedural due process by rearresting Mr. Tang.

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

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

> Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). That Petitioner was arrested in public, detained and transferred to a facility in a different state, and remains in custody today undoubtedly deprives him of an established interest in his liberty . . .
>
> That the Government may believe it has a valid reason to detain Petitioner 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.

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

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

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

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

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

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

The same is true here. Since Mr. Tang complied with his conditions of 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

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

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

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

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

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

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

D. The balance of hardships and public interest weigh heavily in Mr. Tang's favor.

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

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

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

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

[6] Even on a purely economic theory, the balance of hardships favors Mr. Tang. *See Hoac v. Becerra*, No. CV25-01740-DC-JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025) ("[T]he Ninth Circuit has recognized that '[t]he costs to the public of immigration detention are 'staggering,' and that '[s]upervised release programs cost 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).

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IV. CONCLUSION

Mr. Tang has now been in custody for three months without an opportunity to be heard. He respectfully asks the Court to grant this motion for a Temporary Restraining Order.

DATED this 2nd day of September 2025.

Respectfully submitted,

s/ *Gregory Murphy*
Attorney for Dabona Tang

I certify this motion contains 5,146 words in compliance with the Local Civil Rules.

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