

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

) TRAVERSE AND RESPONSE  
) TO MOTION TO DISMISS

) **ORAL ARGUMENT**  
) **REQUESTED**

Petitioner Dabona Tang, pursuant to 18 U.S.C. § 2243, respectfully offers the following traverse and response to Respondents’ motion to dismiss. Dkt. 12.

**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.

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

1 on any change in circumstances indicating Mr. Tang presents an increased likelihood of  
2 flight or risk of dangerousness, and not because Mr. Tang’s removal to Vietnam is  
3 substantially likely in the reasonably foreseeable future. *Id.* Indeed, Respondents’ own  
4 documents show that Mr. Tang is not a citizen of Vietnam. ICE has never argued that  
5 Mr. Tang is a flight risk or danger to the community.

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

## 15 **II. BACKGROUND FACTS AND PROCEDURAL HISTORY**

### 16 **A. Background**

17 When Mr. Tang’s parents fled the war in Vietnam, they resided first in a refugee  
18 camp in Thailand, where Mr. Tang’s older sister was born, and then in a refugee camp  
19 in the Philippines, where Mr. Tang was born. Exs. 1, 6 (Declaration of Lan Kiyen). In  
20 1981, Mr. Tang entered the United States as an infant. Two years later, the former  
21 Immigration and Naturalization Service adjusted Mr. Tang’s status from refugee to  
22 Lawful Permanent Resident. *See* Ex. 2 (Notice of Adjustment of Status). That document  
23 identifies Mr. Tang’s nationality as “stateless.” *Id.*<sup>1</sup>

24  
25  
26 <sup>1</sup> 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

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.* Mr. Tang's supervision  
8 began on August 19, 2011. *Id.*

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

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

25 <sup>2</sup> 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).<sup>3</sup> On the day of Mr. Tang’s arrest, news  
10 outlets reported that during a May 21, 2025, meeting at the White House with ICE  
11 officials, Stephen Miller, White House Deputy Chief of Staff, and Respondent Noem  
12 “expressed their frustrations with the current level of arrests to ICE leadership” and  
13 “reportedly demanded that ICE triple daily arrest totals to 3,000 per day.” Victor Nava,  
14 *ICE shakes up leadership amid push for 3,000 migrant arrests per day*, N.Y. Post (May  
15 29, 2025).<sup>4</sup> Miller himself repeated the call for “a minimum” of 3,000 immigration  
16 arrests a day on Fox News on May 29, 2025. Fox News, *Stephen Miller reveals Trump  
17 admin’s ‘daily goal’ for illegal migrant arrests*, at 00:20 (YouTube, May 29, 2025).<sup>5</sup>

18 Respondents responded to the Administration’s demand to increase arrests by  
19 detaining people who complied with their supervision requirements when they appeared  
20 for their court hearings or periodic check-ins. Although Respondents have not disclosed  
21 the number of people re-arrested pursuant to this change in policy, district courts have  
22  
23

24 <sup>3</sup> [https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-  
25 safe-again](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again) [<https://perma.cc/MGG8-H7TJ>]

26 <sup>4</sup> [https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amid-push-for-  
3000-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>]

<sup>5</sup> <https://www.youtube.com/watch?v=MJNXsOqFSZs>

1 ordered release of people rearrested without cause at least 29 times since May.<sup>6</sup> Despite  
 2 these dozens of orders, Respondents have not voluntarily released similarly situated  
 3 respondents or abated the practice of arresting—without notice—people who pose no  
 4 risk of flight or danger. Instead, Respondents have adopted a policy of opposing release

5 \_\_\_\_\_  
 6 <sup>6</sup> *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 in all cases. *See* Ex. 4 at 86 (testimony describing policy of not granting parole). This  
2 strategy forces each affected person to obtain an order from a district court, a process  
3 that (as here) can delay release following unlawful arrest for months and that is  
4 unavailable to people without access to counsel. ICE’s policy against granting parole  
5 renders any opportunity to request release meaningless.

6 **C. Mr. Tang’s arrest**

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

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

25 Removals to Vietnam of people who left that country before 1995 are currently  
26 governed by a Memorandum of Understanding (MOU), in which Vietnam agrees to

1 consider for repatriation persons who satisfy certain factors. Ex. 5. Respondents will not  
2 disclose those factors, but the MOU on its face applies only to people who previously  
3 resided in Vietnam. *See* Memorandum of Understanding, Article 4(3) (“MPS intends to  
4 issue travel documents where needed, and otherwise to accept the removal of an  
5 individual subject to a final order of removal from the United States who meets all the  
6 following conditions . . . : (3) Resided in Viet Nam prior to arriving in the United States  
7 and currently has no right to reside in any other country or territory.”). Because  
8 Mr. Tang has never resided in Vietnam and is not a Vietnamese citizen, he is not  
9 removable to Vietnam pursuant to the MOU. Nonetheless, Respondents contend that a  
10 recent uptick in removals to Vietnam provides authority to re-detain all persons,  
11 including Mr. Tang, who have been ordered deported to that country but subsequently  
12 released. *See Nguyen v. Scott*, No. CV25-01398, 2025 WL 2419288, at \*30 (W.D.  
13 Wash. Aug. 21, 2025).

14 More than three months after re-arresting Mr. Tang, Respondents requested a  
15 travel document from Vietnam. Respondents have not disclosed the contents of that  
16 request or any response from the Vietnamese government.

17 **D. Procedural history**

18 On August 5, 2025, Mr. Tang filed a petition pursuant to 28 U.S.C. § 2241.  
19 Dkt. 1. Respondents filed their response on August 25, 2025. Dkt. 12. On September  
20 11, 2025, the Court granted in part a motion for a preliminary injunction and ordered  
21 Mr. Tang’s release. Dkt. 26. He has returned to his family in California and continues to  
22 comply with the conditions of his release.

23 Pursuant to 28 USC 2243 and the Magistrate Judge’s scheduling order, Mr. Tang  
24 now files his traverse and response to Respondents’ motion to dismiss.

1 **III. MR. TANG’S REDENTENTION VIOLATES *ZADVYDAS* BECAUSE**  
2 **THE GOVERNMENT CANNOT SHOW HIS REMOVAL IS**  
3 **“SUBSTANTIALLY LIKELY” IN THE REASONABLY FORESEEABLE**  
4 **FUTURE.**

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

11 Mr. Tang therefore bears an initial burden of showing that “there is no  
12 significant likelihood of removal in the reasonably foreseeable future.” To meet that  
13 initial burden, he must show that the presumptively reasonable six-month period has  
14 expired. *See Nguyen*, 2025 WL 2419288 at \*13. Also relevant to Mr. Tang’s burden is  
15 whether Respondents promptly requested a travel document, *id.* at 14, or if there are  
16 any “changed circumstances in Petitioner’s individual case that made his deportation  
17 more likely.” *Id.* at 17. Finally, the Court looks to the factors that Vietnam appears to  
18 consider when issuing a travel document, including Vietnamese citizenship, a  
19 permanent address in Vietnam, any relatives in Vietnam, any other relatives abroad, and  
20 with whom and where a repatriated Vietnamese citizen will live. *Id.* at 26.

21 When Mr. Tang makes this showing, the burden shifts. ICE may not re-detain  
22 Mr. Tang unless it shows that, based on “changed circumstances,” “there is a significant  
23 likelihood that the [noncitizen] may be removed in the reasonably foreseeable future,” 8  
24 C.F.R. § 241.13(i)(2). *See Hernandez-Escalante v. Noem et al.*, No. CV25-00182-MJT,  
25 2025 WL 2206113, at \*3 (E.D. Tex. Aug. 2, 2025) (“These regulations clearly indicate,  
26 upon revocation of supervised release, it is the Service’s burden to show a significant  
likelihood that the alien may be removed.”) (collecting cases).

1 Mr. Tang has met his initial burden by showing that he has been detained more  
2 than six months, that Respondents' records denote him as stateless, that he has never  
3 resided in Vietnam, and that he has no connections to that country. *See* Dkt. 26 (Order  
4 Granting Preliminary Injunction) at 8–10. Respondents therefore must respond with  
5 evidence showing why Mr. Tang, specifically, is likely to meet Vietnam's criteria for  
6 repatriation. *Id.* Respondents cannot sustain their burden by showing evidence of some  
7 increased deportations to Vietnam. *Nguyen at 33. See also Hoac v. Becerra*, No. CV25-  
8 01740-DC-JDP, 2025 WL 1993771, at \*5 (E.D. Cal. July 16, 2025) (“Respondents’  
9 contention that Petitioner’s removal is reasonably foreseeable because removals to  
10 Vietnam are in fact occurring is unpersuasive.”); *Nguyen v. Hyde*, No. CV25-11470-  
11 MJJ, 2025 WL 1725791, \*4 (D. Mass. June 20, 2025) (generalized evidence of  
12 removals to Vietnam insufficient).

13 Here, Respondents have provided no evidence to rebut Mr. Tang’s showing.  
14 Instead, Respondents simply assert that Mr. Tang must be a Vietnamese citizen subject  
15 to removal to that country because an immigration judge ordered him removed to that  
16 country. But that argument misunderstands the significance of the removal order. An  
17 immigration judge ordering the removal of a lawful permanent resident has no power to  
18 confer foreign citizenship and makes no finding about the person’s citizenship. To the  
19 contrary, an immigration judge determines *only* whether the Service has met its burden  
20 to show the person in proceedings is an “alien.” 8 C.F.R. § 240.24(a); *Woodby v. INS*,  
21 385 U.S. 276, 281 (1966). If the immigration judge then denies relief and orders a  
22 person removed, it is the *alien* that “designate[s] one country to which the alien wants  
23 to be removed.” 8 U.S.C. § 1231(b)(2)(A)(i). DHS is then charged with “remov[ing] the  
24 alien to the country the alien . . . designates.” 8 U.S.C. § 1231 (b)(2)(A)(ii). Thus, the  
25 removal proceedings had no effect on Respondents’ 42-year old determination that  
26

1 Mr. Tang is stateless. They simply confirmed that he is not a citizen of the  
2 United States and that Mr. Tang designated Vietnam as the country of removal.

3 Respondents also fail to meet their burden by showing an uptick in removals to  
4 Vietnam. *See* Dkt. 14. Evidence that more people are being deported to Vietnam does  
5 not establish that Mr. Tang, specifically, can or will be removed to that country.

6 **IV. RESPONDENTS VIOLATED SUBSTANTIVE DUE PROCESS BY**  
7 **REARRESTING MR. TANG WITHOUT CAUSE.**

8 “[S]ubstantive due process prevents the government from engaging in conduct  
9 that shocks the conscience, or interferes with rights implicit in the concept of ordered  
10 liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Freedom from bodily  
11 restraint has always been at the core of the liberty protected by the Due Process Clause  
12 from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct.  
13 1780, 118 L.Ed.2d 437 (1992); *see also Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491  
14 (finding that a non-citizen has a liberty interest “strong enough” to challenge “indefinite  
15 and potentially permanent” immigration detention). “Individuals who have been  
16 released from custody, even where such release is conditional, have a liberty interest in  
17 their continued liberty.” *Doe v. Becerra*, — F. Supp. 3d —, —, No. CV25-00647-  
18 DJC-DMC, 2025 WL 691664, at \*5 (E.D. Cal. Mar. 3, 2025) (citing *Morrissey v.*  
19 *Brewer*, 408 U.S. 471, 482 (1972); *Young v. Harper*, 520 U.S. 143, 150 (1997); *Gagnon*  
20 *v. Scarpelli*, 411 U.S. 778, 782 (1973)).

21 “A due process violation occurs when detention becomes punitive rather than  
22 regulatory, meaning there is no regulatory purpose that can rationally be assigned to the  
23 detention or the detention appears excessive in relation to its regulatory purpose.”  
24 *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S.*  
25 *Immigr. & Customs Enf’t.*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“Due  
26 process protects against immigration detention that is not reasonably related to the

1 legitimate purpose of effectuating removal or protecting against danger and flight  
2 risk.”). The regulatory purpose of immigration detention is to hold a person that is a  
3 flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006).  
4 Regulations governing parole identify only those two factors for consideration in the  
5 release decision. 8 C.F.R. § 236.1(c)(8). For people who have been ordered deported, 8  
6 C.F.R. § 241.13(i)(2) also authorizes re-detention for purposes of removal, so long as  
7 respondents can prove that “there is a significant likelihood that the [noncitizen] may be  
8 removed in the reasonably foreseeable future.”

9 Here, Mr. Tang’s re-arrest and detention violated his substantive right to due  
10 process because it was punitive and exceeded the justifications permitted by regulation.  
11 That Respondents arrested Mr. Tang before ever asking for the information they would  
12 need to submit a travel document, then did not notify him of the purported reason for  
13 his detention until he had been incarcerated for 16 days, and then held him far from  
14 home for three months without requesting a travel document is compelling evidence  
15 that Mr. Tang’s detention is intentionally punitive. Respondents’ policy against parole  
16 in all cases supports that conclusion, as do many reported statements advocating for  
17 increased arrests for their own sake. Respondents’ refusal to address widespread  
18 mistreatment of detained immigrants also supports that conclusion. *See Nicole*  
19 *Acevedo, Hundreds of alleged human rights abuses in immigrant detention, report*  
20 *finds*, NBC News (Aug. 5, 2025); Center for Human Rights, *Conditions at the*  
21 *Northwest Detention Center*, University of Washington,  
22 [https://jsis.washington.edu/humanrights/projects/immigrant-rights-](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/)  
23 [observatory/conditions-at-the-northwest-detention-center/](https://jsis.washington.edu/humanrights/projects/immigrant-rights-observatory/conditions-at-the-northwest-detention-center/) [[https://perma.cc/QF24-](https://perma.cc/QF24-UR6C)  
24 [UR6C](https://perma.cc/QF24-UR6C)] (last visited Aug. 28, 2025). And this Court has already observed that  
25 Respondents do not have good reason to believe Mr. Tang will be removed in the  
26 reasonably foreseeable future. Dkt. 26 at 8–10.

1 **V. RESPONDENTS VIOLATED PROCEDURAL DUE PROCESS BY**  
2 **REARRESTING MR. TANG WITHOUT NOTICE AND AN**  
3 **OPPORTUNITY TO BE HEARD.**

4 Procedural due process requires notice and an opportunity to be heard. *Mathews*  
5 *v. Eldridge*, 424 U.S. 319, 333–34 (1976). To state a claim for a violation of procedural  
6 due process rights, a petitioner must establish (1) a protected property or liberty interest,  
7 and (2) a denial of adequate procedural protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d  
8 1059, 1073 (9th Cir. 2015). The Court must also consider “the Government’s interest,  
9 including the function involved and the fiscal and administrative burdens that the  
10 additional or substitute procedural requirement would entail.” *Rodriguez Diaz v.*  
11 *Garland*, 53 F.4th 1189, 1207 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335).

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

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

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

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

24 In *E.A.T.-B.*, as here, there were strong indications that the alleged violations of  
25 supervision were a pretext for a policy change favoring re-detention. But the court did  
26 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 *Mathews*: “the Government’s interest in re-detaining non-  
citizens previously released without a hearing is low” absent some indication of flight

1 risk or danger. *Id.* at \*5. The court also concluded that pre-deprivation process does not  
2 threaten the government’s interest in “preventing noncitizens from remaining in the  
3 United States in violation of the law, as well as in ensuring its orders are followed.” *Id.*

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

23 Respondents do not deny that a campaign of arresting non-citizens who are  
24 complying with their orders of supervision has resulted in dozens of orders granting  
25 habeas petitions. Rather, Respondents argue that the procedural due process protections  
26 that these courts have protected do not apply to Mr. Tang because he has a removal

1 order. *See* Dkt. 24 at 7. But that distinction has no basis in constitutional law: so long as  
2 Mr. Tang remains in the United States, his order of removal does not eliminate the  
3 guarantee of procedural due process. *See Zadvydas*, 533 U.S. at 690–91 (2001) (Safety  
4 of the community does not justify civil detention without “strong procedural  
5 protections.”). And by any objective measure, Respondents’ view of that guarantee—  
6 permitting re-arrest no matter how minor or dated the alleged violation, no notice of the  
7 reason for detention for weeks, and opportunity to apply for release only from an  
8 interested entity with a no release policy—fails to provide “adequate procedural  
9 protections.” *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015).

10 Respondents next argue that the law provides no remedy for these procedural  
11 due process violations because immigration judges do not have jurisdiction over people  
12 with final orders of removal. But the absence of a remedy in the regulations cannot  
13 authorized continued violations of the Constitution. Rather, as many courts have said  
14 previously, Respondents must stop the unconstitutional behavior until they comply with  
15 due process by providing notice and an opportunity to be heard.

## 16 VI. CONCLUSION

17 There is no evidence that Mr. Tang will be removed to Vietnam in the  
18 reasonably foreseeable future, and “nothing in the current record to suggest that  
19 releasing Petitioner would impede Respondents’ ability to remove him to Vietnam if  
20 the necessary travel document is obtained.” *Hoac v. Becerra*, No. CV25-01740-DC-  
21 JDP, 2025 WL 1993771, at \*6 (E.D. Cal. July 16, 2025). Mr. Tang’s arrest without  
22 cause or notice violates the Constitution. Accordingly, he respectfully asks the Court to  
23 deny Respondents’ motion to dismiss and grant his petition.

1 DATED this 15th day of September 2025.

2 Respectfully submitted,

3  
4 s/ *Gregory Murphy*  
Attorney for Dabona Tang

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6 I certify this response contains 4,407 words in compliance with the Local Civil Rules.  
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