

1 Zachary Nightingale (California Bar # 184501)
2 Christine Raymond (Massachusetts Bar #711907)*
3 Van Der Hout LLP
4 360 Post St., Suite 800
5 San Francisco, CA 94108
6 Telephone: (415) 981-3000
7 Facsimile: (415) 981-3003
8 ndca@vblaw.com
9 edca@vblaw.com

10 *Application for PHV forthcoming

11 Attorneys for Petitioner-Plaintiff
12 Kai Lun ZHENG (aka Wai Keung Cheung)

13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 Kai Lun ZHENG,

16 Petitioner-Plaintiff,

17 v.

18 Sergio ALBARRAN, Acting Field Office Director of
19 San Francisco Office of Detention and Removal, U.S.
20 Immigrations and Customs Enforcement; U.S.
21 Department of Homeland Security;

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

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

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

Tonya ANDREWS, Facility Administrator at Golden
State Annex, McFarland, California;

Respondents-Defendants.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

1
2 1. Petitioner-Plaintiff, Kai Lun ZHENG (“Mr. Zheng” or “Petitioner”), by and through his
3 undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for
4 declaratory and injunctive relief to compel the U.S. Department of Homeland Security’s (“DHS”)
5 Immigration and Customs Enforcement (“ICE”) from continuing to unlawfully detain him in their
6 civil immigration custody and immediately release him because his removal to China is not
7 foreseeable. As a Chinese citizen who came to the United States in approximately 1992, who has
8 been successfully reporting to since his release from detention in 2015, who has complied with
9 ICE’s requests to apply for a travel document to China several times (to no avail), and who has
10 also attempted to obtain travel documents to China of his own accord (also to no avail), his removal
11 to China is not reasonably foreseeable, and his re-detention by ICE is limitless in duration. Thus,
12 Mr. Zheng’s detention is unconstitutional both because it is indefinite and because he was not
13 provided with a pre-deprivation hearing before his recent detention by ICE, and illegal because it
14 does not comport with the regulations.

15 2. Mr. Zheng has a removal order to China (and China only) from 2010 which Respondents
16 have not been able to execute, and there is no credible evidence that they will ever be able to
17 execute it. On information and belief, the Chinese government has refused to issue him a travel
18 document despite several requests—both through ICE and by Mr. Zheng’s own efforts—since
19 2010. In fact, in an effort to avoid the limbo in which he now finds himself, jailed with no
20 foreseeable end, Mr. Zheng has personally spoken with Chinese consular officials, who have
21 informed him that they are unable to issue him a travel document because he cannot prove his
22 citizenship or nationality, as he does not have a copy of any prior passports or birth certificate, and
23 the consulate does not have Mr. Zheng in its records. This is consistent with the fact that the
24 Chinese government has historically not accepted deportees from the United States, especially
25 when the individual left at a young age and does not have many remaining ties to China—as is the
26 case for Mr. Zheng.¹ China has been classified by ICE itself as a recalcitrant country in that it

27
28 ¹ The Washington Times, “New bill would punish China for refusing to take back deportees”
((Aug. 31, 2022), Available at: <https://m.washingtontimes.com/news/2022/aug/25/new-bill-would-punish-china-for-refusing-to-take-b/>; Newsweek, “China Among ‘Uncooperative’

1 “systematically refuse[s] or delay[s] the repatriation of [its] citizens.”² In fact, on July 11, 2024,
2 several members of Congress sent a letter to the then-Secretaries of the U.S. Department of
3 Homeland Security (“DHS”) and the U.S. Department of State (“DOS”) noting that “China is one
4 of 13 countries considered uncooperative or ‘recalcitrant,’ systematically refusing or needlessly
5 delaying the repatriation of their citizens.” *See Declaration of Zachary Nightingale (“Nightingale
6 Decl.”)* at Exhibit C (Congressional Letter). This letter further describes how “roughly 100,000
7 Chinese nationals with final orders of removal remain in the [United States], as Beijing has been
8 slow or outright refused to accept the repatriation of its citizens.” *Id.* Therefore, his removal is not
9 reasonably foreseeable.

10 3. Mr. Zheng has also never been ordered removed to any third country apart from China, nor
11 has he been notified of such potential removal. He thus seeks to additionally prevent ICE from
12 summarily removing him to a third country without first being provided constitutionally-compliant
13 procedures—in this instance, notice of any third country removal and an adequate opportunity to
14 apply for fear-based relief as to that country. Given the Supreme Court of the United States’
15 decision on June 23, 2025, in *U.S. Department of Homeland Security v. D.V.D.*, No. 24A1153,
16 2025 WL 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded
17 Respondents from removing noncitizens to third countries without notice and an opportunity to
18 seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send
19 noncitizens to far corners of the planet—places they have absolutely no connection to
20

21
22 Countries Refusing to Take Back Migrants: GOP Letter” (July 12, 2024), available at:
23 <https://www.newsweek.com/gop-letter-chinese-migrants-delays-deportation-1924109>; Vox,
24 “How Trump could try to deport immigrants to countries other than their own” (Dec. 10, 2024),
25 available at: [https://www.vox.com/politics/390533/trump-third-country-deportation-bahamas-
panama-grenada-turks-caicos](https://www.vox.com/politics/390533/trump-third-country-deportation-bahamas-panama-grenada-turks-caicos).

26 ² China has been classified by ICE as a recalcitrant country. *See* Congressional Research Service,
27 “Immigration: ‘Recalcitrant’ Countries and the Use of Visa Sanctions to Encourage Cooperation
28 with Alien Removals” (July 10, 2020), available at: [https://www.congress.gov/crs-
product/IF11025](https://www.congress.gov/crs-product/IF11025) (“According to DHS’s Immigration and Customs Enforcement (ICE), most
countries adhere to their international obligations to accept the timely return of their citizens.
*Countries that systematically refuse or delay the repatriation of their citizens, however, are
considered by DHS to be ‘recalcitrant....’*”) (emphasis added)

1 whatsoever³—in violation of clear statutory obligations set forth in the Immigration and
2 Nationality Act (“INA”), binding treaty, and due process. In the absence of the nation-wide
3 injunction, individual lawsuits like the instant case are the only method to challenge these illegal
4 third-country removals.

5 4. Mr. Zheng was born in China in 1969. In approximately 1992, when Mr. Zheng was
6 approximately 22 or 23 years old, he entered the United States.

7 5. Mr. Zheng was released from federal prison in January 2014 after completing his sentence
8 for a conviction he sustained in 2009.⁴

9 6. On information and belief, DHS initiated removal proceedings against Mr. Zheng while he
10 was serving his prison sentence, and those proceedings took place while he was incarcerated, as
11 part of the Institutional Hearing Program (IHP)—which allows noncitizens to undergo removal
12 proceedings while serving time in certain correctional facilities. On June 4, 2010, an Immigration
13 Judge ordered Mr. Zheng deported to China. In January 2014, upon his release from prison at the
14 conclusion of his sentence, he was transferred into ICE custody.

15 7. Mr. Zheng remained detained until August 2014, during which time he submitted an
16 application for a travel document to China at the request of ICE. However, when it became
17 apparent that China would not issue him the travel document, he was finally released from ICE
18 detention after approximately nine months. The Chinese government has historically *not* accepted
19 deportees from the United States.⁵

20 8. In August 2014, unable to remove Mr. Zheng to China, ICE released him from custody
21 and placed him on a Form I-220B, Order of Supervision, pursuant to which he was scheduled to
22 attend regular check in appointments in person at the San Francisco ICE Office. Through the
23 OSUP, Mr. Zheng was permitted to remain free from custody following his removal proceedings
24 because his removal was not reasonably foreseeable and he is otherwise neither a flight risk nor
25

26 ³ CBS News, “Politics Supreme Court lets Trump administration resume deportations to third
27 countries without notice for now” (June 24, 2025), available at:
<https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/>.

28 ⁴ In 2009, Mr. Zheng was convicted of 21 U.S.C. §§ 846, 841(b)(1)(C) and 26 U.S.C. § 7201.

⁵ See *supra* n.1 and n.2.

1 a danger to the community. The OSUP also permitted him to apply for work authorization. 8
2 C.F.R. § 241.5.

3 9. In or around May 2015, Mr. Zheng was unlawfully re-detained by ICE for approximately
4 two months, but was again released in July 2015 due to the agency's continued inability to obtain
5 a travel document for him from China. Since his re-release, Mr. Zheng has been reporting to the
6 ICE San Francisco Field Office on a regular basis pursuant to his OSUP since he was re-released
7 from incarceration over ten years ago.

8 10. In 2015 and again 2024, Mr. Zheng submitted two inquiries to the Chinese consulate to
9 obtain his passport, but was denied both times. He provided the consulate with his name,
10 background information, and information about his relatives in China. However, consulate
11 officials informed Mr. Zheng that he was not found on the consular records and, absent a copy of
12 his passport and/or birth certificate, both of which Mr. Zheng does not possess, the consulate
13 informed him that it could not issue him a passport or any travel document.

14 11. For over eleven years, since his initial release on his first OSUP, Mr. Zheng has complied
15 with the terms of his OSUP by attending all his check-ins at the San Francisco ICE Field Office.
16 Through his OSUP, he remained free from custody following his removal proceedings because his
17 removal was not reasonably foreseeable and he is otherwise neither a flight risk nor a danger to
18 the community. He also applied for and received work authorization, worked hard to support
19 himself and his U.S. citizen daughter, whom he has helped raise, and has reconnected with his
20 family and community.

21 12. On information and belief, on January 25, 2025, officials in the new Trump administration
22 directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office
23 was instructed to make 75 arrests per day.⁶

24 13. In July 2025, ICE contacted Mr. Zheng and asked him to fill out travel documents to China,
25 and to provide the completed forms and passport-style photos at his check-in on October 15, 2025.
26

27
28 ⁶ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan. 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 On October 15, 2025, when Mr. Zheng attended his check-in at the San Francisco ICE Field Office
2 and provided the forms and photos requested, ICE officers detained him. Mr. Zheng requested an
3 explanation for the sudden arrest, but ICE did not provide him with an explanation as to why he
4 was being re-detained other than that he had a warrant for his arrest—presumably the same warrant
5 related to his 2010 order of removal.

6 14. Later that same day, on October 15, 2025, ICE officers provided Mr. Zheng with a Notice
7 of Revocation of Release and informed him that his OSUP had been revoked because the new
8 administration could obtain a travel document for him. At some point, the officers asked him if he
9 wanted to make a statement, and Mr. Zheng informed them that if removal was practicable due to
10 a travel document, that he was willing to go back to China but also that if no travel document
11 would be issued, that he should be released and not be held in ICE detention indefinitely. Despite
12 this request and despite the fact that in the last ten years China had never issued a travel document,
13 the officers continued to detain him as if nothing he said would make a difference in their (already
14 made) decision.

15 15. Thereafter, ICE transferred Mr. Zheng to Golden State Annex Detention Facility, where he
16 remains detained. He has not been able to speak further about his case with an ICE officer, and he
17 has not had the opportunity to present evidence in support of the fact that his removal is not
18 reasonably foreseeable. He also has not been asked to sign any additional documents. Mr. Zheng
19 has been unlawfully detained since October 15, 2025, needlessly separated from his family and
20 community in the United States. Following his unexpected detention, he has diligently sought legal
21 representation to challenge his unlawful detention in court.

22 16. Since Mr. Zheng's re-release from ICE custody in 2015, ICE did not seek to re-detain him.
23 Instead, for over ten years since his last release from custody, Mr. Zheng has been attending his
24 routine check-in appointments as required, working to support himself and his U.S. citizen
25 daughter, and reconnecting with family and his community after having been incarcerated.

26 17. By statute and regulation, ICE has the authority to re-detain a noncitizen on an OSUP
27 previously ordered removed only in specific circumstances, including where an individual violates
28 any condition of release or the individual's conduct demonstrates that release is no longer

1 appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)–(2). That authority, however, is proscribed
2 by the Due Process Clause because it is well-established that individuals released from
3 incarceration have a liberty interest in their freedom. To protect that interest, due process requires
4 notice and a hearing, *prior to any re-detention*, at which the individual is afforded the opportunity
5 to advance his arguments as to why he should not be re-detained.

6 18. Here, by releasing Mr. Zheng on an OSUP—with which he has fully complied and lived
7 at liberty for 11 years—Respondents created a reasonable expectation that Mr. Zheng would be
8 permitted to live and work in the United States without being subject to arbitrary arrest and
9 removal.

10 19. This reasonable expectation creates constitutionally-protected liberty and property
11 interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices
12 may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also*
13 *Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S. Ct.
14 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants). These
15 benefits are entitled to constitutional protections no matter how they may be characterized by
16 Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he
17 identification of property interests under constitutional law turns on the substance of the interest
18 recognized, not the name given that interest by the state or other independent source.”) (internal
19 quotations omitted).

20 20. Further, freedom from imprisonment lies at the heart of the liberty protected by the Due
21 Process Clause, and indefinite detention raises a serious constitutional problem. *Zadvydas v. Davis*,
22 533 U.S. 678, 690 (2001). The Constitution requires that detention “bear a reasonable relationship
23 to the purpose for which the individual [was] committed.” *Id.* The purpose of post-final-order
24 detention is to effectuate removal, but if removal cannot be effectuated, then the detention bears
25 no reasonable relationship. *Id.* at 697. The Supreme Court has limited the potentially indefinite
26 post-removal order detention to be presumptively six months. *Id.* at 701. Notably, the six-month
27 period does not reset when the government re-detains a noncitizen. *Sied v. Nielsen*, No. 17-CV-
28 06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (citing cases); *Chen v. Holder*, No.

1 CV 6:14-2530, 2015 WL 13236635, at *2 (W.D. La. Nov. 20, 2015); *Villanueva v. Tate*, No. H-
2 25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sep. 26, 2025).

3 21. Here, Mr. Zheng's removal is not reasonably foreseeable because China has, since at least
4 2010, refused to issue him travel documents because they are unable to establish his nationality or
5 citizenship. Mr. Zheng was already released from detention after findings that his removal was not
6 reasonably foreseeable and that he need not be incarcerated to prevent flight or to protect the
7 community, and no circumstances have changed that would justify his re-arrest, as there is no
8 current and valid travel document for Mr. Zheng and he has not violated any of his conditions
9 under OSUP. In fact, ICE has been unable to secure a travel document for Mr. Zheng since at least
10 2014. Nothing has changed—ICE has failed to obtain a travel document since Mr. Zheng's
11 detention in 2014 and again in 2015, Mr. Zheng also made at least two attempts to obtain his travel
12 documents from China in 2015 and in 2024, then this year Mr. Zheng cooperated with ICE to once
13 again obtain his travel document, and now since Mr. Zheng's re-detention on October 15, 2025,
14 ICE has yet again failed to obtain a travel document. His continued detention without any
15 reasonably foreseeable end point is thus unconstitutional as it is indefinite, in violation of clear
16 Supreme Court precedent.

17 22. The basic principle that individuals placed at liberty are entitled to process before the
18 government imprisons them has particular force here, where Mr. Zheng was *already* previously
19 released first from federal prison, then subsequently from ICE detention over eleven years ago,
20 after which he began to rebuild his life, including by reconnecting with family and securing
21 employment, only to be unlawfully re-detained and re-released by ICE in 2015, and now once
22 more unlawfully re-detained. Under these circumstances, DHS was required to afford him the
23 opportunity to advance arguments in favor of his freedom before it robbed him of his liberty. He
24 must therefore be released from custody and should not be re-detained unless and until DHS proves
25 to a neutral adjudicator, this Court, given that his detention has the potential to be
26 unconstitutionally indefinite, that his removal to China is actually reasonably foreseeable. *J.L.R.P.*
27 *v. Wofford*, No. 1:25-cv-01464-KES-SKO (HC), 2025 WL 3190589, at *10 (E.D. Cal. Nov. 14,
28 2025) (habeas granted enjoining and restraining the government from re-detaining the petitioner

1 “unless there are material changed circumstances and a neutral decisionmaker determines that
2 there is a significant likelihood of petitioner’s removal in the reasonably foreseeable future....”);
3 *Garcia-Ayala v. Andrews*, No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at *5 (E.D. Cal.
4 Aug. 8, 2025) (TRO prohibiting the government from re-detaining the petitioner without notice
5 and a pre-deprivation hearing before a neutral decisionmaker); *Diaz v. Kaiser*, No. 3:25-cv-05071,
6 2025 WL 1676854 (N.D. Cal. June 14, 2025) (TRO prohibiting the government from re-detaining
7 the petitioner without notice and a hearing before a neutral adjudicator); *Pinchi v. Noem*, 792 F.
8 Supp. 3d 1025, 1036 (N.D. Cal. 2025) (“If the government wishes to detain [the petitioner], it need
9 only provide a hearing before a neutral decisionmaker.”). Several federal district courts have
10 ordered similar relief in other cases involving arrests while under OSUP, including where the
11 petitioners are Chinese nationals. *Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC), 2025
12 2025 WL 3123793, at *4 (E.D. Cal. Nov. 7, 2025) (Respondents failed “to explain why China did
13 not issue a travel document in the past or why China is likely to issue a travel document for
14 petitioner in the reasonably foreseeable future,” whether there is a repatriation agreement between
15 the United States and China, whether removals to China are common, to identify what
16 considerations the Government of China might take into account when deciding whether to issue
17 a travel document, and whether the Government of China “will look favorably upon petitioner’s
18 case.”); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025)
19 (ordering the immediate release of petitioner with a final removal order who had been complying
20 with an OSUP for years when he was unlawfully re-detained at a routine check despite no changed
21 circumstances); *Phan v. Becerra*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16,
22 2025) (same); *Hoang v. Cruz*, No. EDCV 25-2766 JGB (JCx), 2025 WL 3141857 (C.D. Cal. Oct.
23 28, 2025) (same).

24 23. During any custody redetermination hearing that occurs, the neutral adjudicator must
25 further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk
26 that DHS may establish.

27 24. Moreover, under the INA, Respondents’ have a statutory obligation to remove Mr. Zheng
28 *only* to the country designated for removal—in this case, China. 8 U.S.C. § 1231(b)(2)(A)(ii). If

1 Mr. Zheng is to be removed to a third country, Respondents *must* first assert a basis under 8 U.S.C.
2 § 1231(b)(2)(C) and ICE *must* provide him with sufficient notice and an opportunity to respond
3 and apply for fear-based relief as to that country, in compliance with the INA, due process, and
4 the binding international treaty: The Convention Against Torture (CAT) and Other Cruel, Inhuman
5 or Degrading Treatment or Punishment.⁷

6 25. Currently, DHS has a policy of removing or seeking to remove individuals to third
7 countries without first providing constitutionally adequate notice of third country removal, or any
8 meaningful opportunity to contest that removal if the individual has a fear of persecution or torture
9 in that country. *See Nightingale Decl.* at Exhibit D (DHS Policy Regarding Third Country
10 Removal). The U.S. District Court for the District of Massachusetts previously issued a nationwide
11 preliminary injunction blocking such third country removals without notice and a meaningful
12 opportunity to apply for relief under the CAT, in recognition that the government's policy violates
13 due process and the United States' obligations under the CAT. *D.V.D. v. U.S. Department of*
14 *Homeland Security*, No. 25-10676-BEM, 2025 WL 1142968 (D. Mass. Apr. 18, 2025). The U.S.
15 Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025,
16 just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide
17 injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals
18 only disagreement with the nature, and not the substance, of the nationwide preliminary injunction.

19 26. The policy squarely violates the INA because it does not take into account, *or even mention*,
20 an individual's designated country of removal—thereby fully contravening the statutory
21 instruction that DHS must only remove an individual to the designated country of removal. U.S.C.
22 § 1231(b)(2)(A)(ii).

23 27. Further, the policy plainly violates the United States' obligations under the CAT and
24 principles of due process because it allows DHS to provide individuals with *no notice whatsoever*
25 prior to removal to a third country, so long as that country has provided "assurances" that deportees
26 from the United States "will not be persecuted or tortured." *See Nightingale Decl.* at Exhibit D

27 ⁷ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading
28 Treatment or Punishment (Dec. 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

1 (DHS Policy Regarding Third Country Removal). If, in turn, the country has not provided such an
2 assurance, then DHS officers must simply inform an individual of removal to that third country,
3 but are not required to inform them of their rights to apply for protection from removal to that
4 country under the CAT. *Id.* Rather, noncitizens instead must already be aware of their rights under
5 this binding international treaty, and must affirmatively state a fear of removal to that country in
6 order to receive a fear-based interview to screen for their eligibility for protection under the CAT.
7 *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply
8 for fear-based relief, because the interview happens within 24 hours after an individual states a
9 fear of removal to a recently-designated third country, which hardly provides for any time to
10 consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the
11 screening interview is not a screening interview at all, because DHS officers under the policy are
12 instructed to determine at this interview “whether the alien would more likely than not be
13 persecuted on a statutorily protected ground or tortured in the country of removal”—which is the
14 standard for protection under the CAT that Immigration Judges apply after a full hearing in
15 Immigration Court. *Id.* Then, if the officer determines that the noncitizen has not met this standard,
16 they will then be removed to the third country to which they claimed, and tried to demonstrate
17 within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this
18 process will occur in an individual’s native language, or a language that they understand. *Id.* This
19 is nothing more than a fig leaf of due process meant to deprive individuals of the protection that
20 the law and treaty are supposed to provide them.

21 28. Therefore, in this individual habeas petition, Mr. Zheng submits that he cannot be removed
22 to any third country unless he is first provided with adequate notice and a meaningful opportunity
23 to apply for protection under the CAT. Several federal district courts have already issued similar
24 relief. *J.R. v. Bostock*, No. 2:25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. June 30, 2025)
25 (TRO prohibiting the government from removing petitioner to “any third country in the world
26 absent prior approval from this Court”); *Ortega v. Kaiser*, No. 25-cv-5259, 2025 WL 2243616
27 (N.D. Cal. Aug. 6, 2025) (TRO prohibiting the government from “arresting, detaining, or
28 removing” the petitioner to a third country “without notice and a hearing.”); *Vaskanyan v. Janecka*,

1 No. 25-cv-1475, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025) (TRO prohibiting government from
2 “removing the petitioner “to a third country, i.e., a country other than the countries designated as
3 he countries of removal in Petitioner’s final order of removal...without written notice to both
4 Petitioner and Petitioner’s counsel in a language the Petitioner can understand. Following notice,
5 Petitioner must be given a meaningful opportunity, and a minimum of ten (10) days, to raise a fear-
6 based claim for protection under the CAT prior to removal. If Petitioner demonstrates ‘reasonable
7 fear’ of removal to the third country, Respondents must move to reopen Petitioner’s removal
8 proceedings. If Petitioner is not found to have demonstrated a ‘reasonable fear’ of removal to the
9 third country, Respondents must provide a meaningful opportunity, and a minimum of fifteen (15)
10 days, for the non-citizen to seek reopening of his immigration proceedings.”).

11 **CUSTODY**

12 29. Petitioner is currently detained by DHS at the Golden State Annex ICE Detention Center
13 in McFarland, California, where he was transferred after ICE officers arrested him during his
14 routine check-in at the San Francisco Field Office.

15 **JURISDICTION**

16 30. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
17 federal question jurisdiction; 5 U.S.C. § 701 *et seq.*, All Writs Act; 28 U.S.C. § 2241 *et seq.*, habeas
18 corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States
19 Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the common law,
20 as Petitioner is detained under color of the authority of the United States, and such custody is in
21 violation of the Constitution, laws, regulations, and, or treaties of the United States.

22 31. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
23 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner’s rights
24 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
25 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue a
26 writ of habeas corpus for their immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
27 (2001); *Zadvydas v. Davis*, 533 U.S. 678 (2001).

28 **REQUIREMENTS OF 28 U.S.C. § 2243**

1 32. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
2 (“OSC”) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. §
3 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three days*
4 unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis
5 added).

6 33. Courts have long recognized the significance of the habeas statute in protecting individuals
7 from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ
8 known to the constitutional law of England, affording as it does a *swift* and imperative remedy in
9 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis
10 added).

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

16 VENUE

17 35. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
18 Respondents are employees or officers of the United States, acting in their official capacity;
19 because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern
20 District of California; because Petitioner is currently detained in the Eastern District of California;
21 and because there is no real property involved in this action.

22 EXHAUSTION OF ADMINISTRATIVE REMEDIES

23 36. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
24 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
25 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
26 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
27 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation
28 marks omitted)). Petitioner Mr. Zheng asserts that exhaustion is satisfied as there is no

1 administrative jurisdiction over this detention status because he already has a final order of
2 removal.

3 37. No statutory exhaustion requirements apply to Petitioner Mr. Zheng's claim of unlawful
4 custody in violation of his due process rights, and there are no administrative remedies that he
5 needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir.
6 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to
7 review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal.
8 2000) (same).

9 **PARTIES**

10 38. Petitioner Mr. Kai Lun ZHENG was born in China in 1969. He has a final order of removal
11 and was released from ICE custody in 2015 pursuant to an Order of Supervision. Petitioner is
12 currently in ICE custody at Golden State Annex.

13 39. Respondent Sergio ALBARRAN is the Acting Field Office Director of ICE, in San
14 Francisco, California and is named in his official capacity. ICE is the component of the DHS that
15 is responsible for detaining and removing noncitizens according to immigration law and oversees
16 custody determinations. In his official capacity, he is the legal custodian of Petitioner.

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

21 41. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity.
22 DHS is the federal agency encompassing ICE, which is responsible for the administration and
23 enforcement of the Immigration and Nationality Act (INA) and all other laws relating to the
24 immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for
25 the administration and enforcement of the immigration and naturalization laws pursuant to section
26 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002);
27 *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.
28

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

6 43. Respondent Tonya ANDREWS is the Facility Administrator of Golden State Annex where
7 Petitioner is being held. Respondent Andrews oversees the day-to-day operations of Golden State
8 Annex and acts at the Direction of Respondents Lyons, Noem, and Albarran. She is a custodian of
9 Petitioner and is named in her official capacity.

10 **STATEMENT OF FACTS**

11 44. Mr. Zheng was born in China in 1969. In approximately 1992, when Mr. Zheng was
12 approximately 22 or 23 years old, he entered the United States.

13 45. Mr. Zheng was released from federal prison in January 2014 after completing his sentence
14 for a conviction he sustained in 2009.⁸

15 46. On information and belief, DHS initiated removal proceedings against Mr. Zheng while he
16 was serving his prison sentence, and those proceedings took place while he was incarcerated, as
17 part of the Institutional Hearing Program (IHP)—which allows noncitizens to undergo removal
18 proceedings while serving time in certain correctional facilities. On June 4, 2010, an Immigration
19 Judge ordered Mr. Zheng deported to China. In January 2014, upon his release from prison at the
20 conclusion of his sentence, he was transferred into ICE custody.

21 47. Mr. Zheng remained detained until August 2014, during which time he submitted an
22 application for a travel document to China at the request of ICE. However, when it became
23 apparent that China would not issue him the travel document, he was finally released from ICE
24 detention after approximately nine months. The Chinese government has historically *not* accepted
25 deportees from the United States.⁹

26 48. In August 2014, unable to remove Mr. Zheng to China, ICE released him from custody
27

28 ⁸ *Supra* n.3.

⁹ *See supra* n.1 and n.2.

1 and placed him on a Form I-220B, Order of Supervision, pursuant to which he was scheduled to
2 attend regular check in appointments in person at the San Francisco ICE Office. Through the
3 OSUP, Mr. Zheng was permitted to remain free from custody following his removal proceedings
4 because his removal was not reasonably foreseeable and he is otherwise neither a flight risk nor
5 a danger to the community. The OSUP also permitted him to apply for work authorization. 8
6 C.F.R. § 241.5.

7 49. In or around May 2015, ICE unlawfully re-detained Mr. Zheng after informing him that
8 ICE would be obtaining a travel document for him. At the time, Mr. Zheng had complied with the
9 terms of his OSUP by attending his scheduled check-ins at the San Francisco ICE Field Office,
10 had applied for work authorization, and had not sustained any further arrests or convictions. Mr.
11 Zheng was again detained by ICE for almost two months. During this time, two individuals
12 alleging to be Chinese consular officers visited and interviewed him inside of the detention facility.
13 Mr. Zheng willingly spoke with them, and verified his identity and background information to
14 them. However, no travel document was ever procured by ICE or produced by the consulate. Mr.
15 Zheng was again released on an OSUP in July 2015.

16 50. In 2015 and again 2024, Mr. Zheng submitted two inquiries to the Chinese consulate to
17 obtain his passport, but was denied both times. He provided the consulate with his name,
18 background information, and information about his relatives in China. However, consulate
19 officials informed Mr. Zheng that he was not found on the consular records and, absent a copy of
20 his passport and/or birth certificate, both of which Mr. Zheng does not possess, the consulate
21 informed him that it could not issue him a passport or any travel document.

22 51. Since his re-release in 2015, Mr. Zheng has continued to comply with the terms of his
23 OSUP by regularly attending all his check-ins at the San Francisco ICE Field Office. He also
24 applied for and received a work authorization document. He has had no further arrests or
25 convictions. For over eleven years, since his initial release on his first OSUP, Mr. Zheng has
26 worked hard to support himself and his U.S. citizen daughter, whom he has helped raise.

1 52. On information and belief, on January 25, 2025, officials in the new Trump administration
2 directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office
3 was instructed to make 75 arrests per day.¹⁰

4 53. In July 2025, ICE contacted Mr. Zheng and asked him to fill out travel documents to China,
5 and to provide the completed forms and passport-style photos at his check-in on October 15, 2025.

6 54. On October 15, 2025, when Mr. Zheng attended his check-in at the San Francisco ICE
7 Field Office and provided the forms and photos requested, ICE officers detained him. Mr. Zheng
8 requested an explanation for the sudden arrest, and ICE informed him that he had a warrant for his
9 arrest.

10 55. Later that same day, on October 15, 2025, ICE officers provided Mr. Zheng with a Notice
11 of Revocation of Release and informed him that his OSUP had been revoked because the new
12 administration could obtain a travel document for him. At some point, the officers asked him if he
13 wanted to make a statement, and Mr. Zheng informed them that if removal was practicable due to
14 a travel document, that he was willing to go back to China but also that if no travel document
15 would be issued, that he should be released and not be held in ICE detention indefinitely.

16 56. Thereafter, ICE transferred Mr. Zheng to Golden State Annex Detention Facility, where he
17 remains detained. He has not been able to speak further about his case with an ICE officer, and he
18 has not had the opportunity to present evidence in support of the fact that his removal is not
19 reasonably foreseeable. He also has not been asked to sign any additional documents.

20 57. Since being detained, Mr. Zheng has diligently sought legal representation to challenge his
21 detention.

22 LEGAL BACKGROUND

23 58. On October 15, 2025, Mr. Zheng was suddenly and unlawfully detained once again by ICE
24 on October 15, 2025 while attending his regular appointment. Nothing has changed since his last
25 two ICE detentions, yet ICE is once again violating his constitutional rights. Because all evidence
26 indicates that he still cannot be removed, his re-detention by ICE must be held unlawful as it is

27 ¹⁰ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan.
28 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 limitless in duration. He has also never been ordered removed to any third country or notified of
2 such potential removal. Thus, Mr. Zheng's detention is both unconstitutional because it is
3 indefinite, and illegal because it does not comport with the regulations, and he was otherwise not
4 provided any pre-deprivation hearing before his recent detention by ICE.

5 59. Mr. Zheng's prolonged and potentially indefinite detention is also not constitutional, given
6 that his removal to China, the only country to which he has been ordered removed, is not
7 reasonably foreseeable.

8 60. Mr. Zheng is also at risk of being unlawfully removed to a third country without
9 constitutionally adequate notice and a meaningful opportunity to apply for protection under the
10 CAT, in violation of the INA, binding international treaty, and due process. Currently, DHS has a
11 policy of removing or seeking to remove individuals to third countries *without* first providing
12 adequate notice of third country removal, or any meaningful opportunity to contest that removal if
13 the individual has a fear of persecution or torture in that country. *See Nightingale Decl.* at Exhibit
14 D (DHS Policy Regarding Third Country Removal).

15 61. Intervention from this Court is therefore required to ensure that Mr. Zheng does not
16 continue to suffer irreparable harm in the form of unjustified, prolonged, and indefinite detention,
17 and further violation of his rights in the form of summary removal to a third country.

18 **Right to a Hearing Prior to Re-incarceration**

19 62. In Mr. Zheng's particular circumstances, the Due Process clause of the Constitution makes
20 it unlawful for Respondents to re-detain him without first providing a pre-deprivation hearing
21 before a neutral decisionmaker to determine whether his removal is reasonably foreseeable, or
22 whether circumstances have changed since his release from immigration custody in 2015 such that
23 detention would now be warranted on the basis that he is a danger or a flight risk.

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

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

13 65. Post-final order detention is only authorized for a “period reasonably necessary to secure
14 removal,” a period that the Court determined to be presumptively six months. *Id.* at 699–701. After
15 this six (6) month period, if a detainee provides “good reason” to believe that his or her removal
16 is not significantly likely in the reasonably foreseeable future, “the Government must respond with
17 evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the
18 individual must be released. Notably, courts have held that the six-month *Zadvydas* period does
19 not reset or restart if the government decides to re-detain a noncitizen. *Sied*, 2018 WL 1876907, at
20 *6 (citing cases) (“the six-month period does not reset when the government detains a[]
21 [noncitizen] . . . , releases him from detention, and then re-detains him again.”); *Chen*, 2015 WL
22 13236635, at *2 (“[s]urely, under the reasoning of *Zadvydas*, a series of releases and re-detentions
23 by the government . . . while technically not in violation of the presumptively reasonable
24 jurisprudential six month removal period, in essence results in an indefinite period of detention,
25 albeit executed in successive six month intervals.”); *Villanueva*, 2025 WL 2774610, at *9.

26 66. In light of the Supreme Court limitations imposed on the statutory scheme, the government
27 updated the regulations to be consistent with those constitutionally required limitations on
28 indefinite detention. Under those regulations, detainees are entitled to release even before six

1 months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1)
2 (authorizing release after ninety days where removal not reasonably foreseeable). Further, under
3 the Supreme Court’s constitutional limitations on indefinite detention, as the period of post-final-
4 order detention grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas*,
5 533 U.S. at 701.

6 67. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention
7 violates the Due Process Clause unless it is “reasonably related” to the government’s purpose,
8 which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably
9 foreseeable, the habeas court should consider the risk of the alien’s committing further crimes as
10 a factor potentially justifying confinement within that reasonable removal period”) (emphasis
11 added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at the moment of
12 removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and
13 protecting the community).

14 68. The government’s own regulations contemplate the flight risk or danger requirement. They
15 dictate that even after ICE determines that removal is reasonably foreseeable—and that detention
16 therefore does not per se exceed statutory authority—the government must still determine whether
17 continued detention is warranted based on flight risk or danger. *See* 8 C.F.R. § 241.13(g)(2)
18 (providing that where removal is reasonably foreseeable, “detention will continue to be governed
19 under the established standards” in 8 C.F.R. § 241.4).

20 69. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even
21 before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE
22 to conduct “90-day custody reviews” prior to expiration of the ninety-day removal period and to
23 consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)–(f). Among
24 the factors to be considered in these custody reviews are “ties to the United States such as the
25 number of close relatives residing here lawfully”; whether the noncitizen “is a significant flight
26 risk”; and “any other information that is probative of whether” the noncitizen is likely to “adjust
27 to life in a community,” “engage in future acts of violence,” “engage in future criminal activity,”
28

1 pose a danger to themselves or others, or “violate the conditions of his or her release from
2 immigration custody pending removal from the United States.” *Id.*

3 70. Mr. Zheng must be released because ICE took him into custody without evidence of
4 changed circumstances or notice or hearing, in violation of his due process and ICE’s own
5 regulations. Individuals who, like Mr. Zheng, have final orders and who are released after a post-
6 order custody review are subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After
7 an individual has been released on an order of supervision, as Mr. Zheng was, ICE cannot revoke
8 such an order without cause—that the OSUP was violated or upon changed circumstances—or
9 adequate legal process. 8 C.F.R. § 241.13(i)(2)–(3). ICE must also provide adequate legal process
10 on revocation. *See* 8 C.F.R. § 241.13(i)(2)–(3) (requiring notice of the reason for revocation of
11 release, and an interview at which an individual has an opportunity to respond to the reasons given
12 for revocation and submit evidence and information on his behalf, including to show that there is
13 no significant likelihood¹¹ of removal in the reasonably foreseeable future).

14 71. Federal district courts in California and throughout the country have repeatedly recognized
15 that the demands of due process and the limitations on DHS’s authority to re-detain a noncitizen
16 both require a pre-deprivation hearing *before* re-detention by ICE. *M.R. v. Kaiser*, 791 F.Supp.3d
17 1021, 1038 (N.D. Cal. July 17, 2025) (TRO prohibiting government from re-detaining the
18 petitioner without notice and a hearing before a neutral adjudicator); *Diaz*, 2025 WL 1676854, at
19 *3 (same); *Singh*, 2025 WL 1918679, at *8 (same); *Ortega*, 2025 WL 2243616, at *6-8 (same);
20 *Pinchi*, 792 F. Supp. 3d at 1036 (“If the government wishes to detain [the petitioner], it need only
21 provide a hearing before a neutral decisionmaker.”).

22 72. Further, any determination based on changed circumstances must be made *on or before* the
23 revocation. 8 C.F.R. § 241.13; *Tran v. Noem*, No. 25-cv-2391BTM-BLM, 2025 WL 3005347, at
24 *2 (S.D. Cal. Oct. 27, 2025).

25
26 ¹¹ This Court has held that a “significant likelihood” requires something more than a mere
27 possibility that removal will occur. *Yan-Ling X.*, 2025 WL 3123793, at *4. Evidence that “there is
28 at least some possibility that” the designated country of removal “will accept the petitioner at some
point . . . is not the same as a significant likelihood that the petitioner will be accepted in the
reasonably foreseeable future.” *Id.* at *12 (cleaned up).

1 73. In this case, Mr. Zheng was released on an OSUP. It specified the conditions imposed on
2 him, and he has complied with all those conditions for many years. In October 2025, ICE re-
3 arrested Mr. Zheng on the premise that there are “changed circumstances” to revoke his OSUP by
4 only merely alleging that the new administration would be able to obtain his travel document.
5 Notably, ICE only issued Mr. Zheng his Notice of Revocation without any evidence that a travel
6 request was in fact pending for him or an adequate opportunity to respond to ICE’s allegations or
7 evidence that it was foreseeable that they could in fact obtain travel documents for him after
8 repeatedly failed attempts throughout over 10 years. Since the date of his arrest, Mr. Zheng has
9 not been given a prompt interview to respond to the reasons for revocation, or any other evidence
10 in support the Notice of Revocation.

11 74. Thus, when ICE officers took Mr. Zheng into custody on October 15, 2025, without
12 evidence of changed circumstances or notice or hearing, ICE violated its own regulations, and now
13 Mr. Zheng’s detention is clearly indefinite. Currently, there is no evidence that the United States
14 and China have a repatriation agreement in place. *Yan-Ling X.*, 2025 WL 3123793, at *4.
15 Moreover, China has historically refused to issue travel documents for deportees,¹² and also has
16 repeatedly refused to issue Mr. Zheng travel documents despite his own several requests, as they
17 cannot establish his citizenship or nationality. That Mr. Zheng “attempted for multiple years to
18 secure travel documents to facilitate his return to China [] supports his contention that it is unlikely
19 that he will be removed in the foreseeable future.” *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC
20 (HC), 2025 WL 2791778, at *6 (E.D. Cal. Aug. 20, 2025); *see also Liu v. Carter*, No. 25-cv-
21 03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding that the respondents had
22 not shown that removal was reasonably foreseeable where they did not provide evidence why
23 seeking travel documentation was more likely to be successful this time around or describe other
24 actions taken to make the petitioner's removal more likely); *Nguyen v. Scott*, No. 2:25-CV-01398,
25 2025 WL 2419288, at *16 (W.D. Wash. Aug. 21, 2025) (determining that a mere possibility is
26 insufficient to rise to the “significant likelihood” requirement under the regulations to support
27 reasonable foreseeability of removal); *Hoac*, 2025 WL 1993771 (ordering the immediate release

28

¹² *See supra* n.1.

1 of petitioner who complied with an OSUP for years and was unlawfully re-detained at a routine
2 check despite no changed circumstances); *Phan*, 2025 WL 1993735 (same). Nothing in the record
3 evidences any change from the circumstances of the past 10 years. There is no evidence that China
4 will agree to take him now that “removals to China are common,” there is no evidence of what
5 “considerations the Government of China might take into account when deciding whether to issue
6 a travel document” to Mr. Zheng (or that this might be different now), and there is no evidence
7 that China will look favorably upon his case (when it has not done so over the last 10 years when
8 both ICE and Mr. Zheng asked them to do so). *Yan-Ling X.*, 2025 WL 3123793, at *4. Hence, even
9 if China has changed its repatriation policy in general, there is no evidence of a change with regards
10 to Mr. Zheng specifically given his unique situation and specific requests.¹³ Thus, Mr. Zheng’s
11 removal is not reasonably foreseeable in this case, and the government has not provided him with
12 notice, evidence, or an opportunity to be heard on this issue on or before arbitrarily re-detaining
13 him. His continued detention without any reasonably foreseeable end point is thus unconstitutional
14 because it is now clearly indefinite. Further, ICE has already held Mr. Zheng in detention before
15 he was released in 2014 and again in 2015, and therefore not only is his release legally possible,
16 but it is under these circumstances legally required. 8 C.F.R. § 241.13(b)(1).

17 75. Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention
18 violates the Due Process Clause unless it is “reasonably related” to the government’s purpose,
19 which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 (“[I]f removal is reasonably
20 foreseeable, the habeas court should consider the risk of the alien’s committing further crimes as
21

22 ¹³ Even if there are instances where the United States has successfully removed others to China,
23 that success does not necessarily bear on the likelihood of obtaining travel documentation for Mr.
24 Zheng, absent some evidence specific to his case or “at least evidence concerning the obstacles to
25 removal that have been overcome recently concerning those aliens on the recent repatriation
26 flights. For example, . . . evidence that officials had had more success recently obtaining travel
27 documents.” *Liu v. Carter*, No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17,
28 2025); *Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502 (D. Kan. Sep. 26, 2025) (“the fact
that only one document has been received may just as reasonably suggest that a travel document
for this petitioner is *not* forthcoming.”) (emphasis in original). Here, absent evidence of success in
other cases that are so similar to Mr. Zheng’s, including evidence that the previously-existing
obstacles regarding his inability to establish nationality and citizenship have been overcome, ICE
cannot establish that it will have any success in obtaining his travel document.

1 a factor potentially justifying confinement within that reasonable removal period”) (emphasis
2 added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at the moment of
3 removal”); *Id.* at 690–91 (discussing twin justifications of detention as preventing flight and
4 protecting the community). Thus, Mr. Zheng must be released from custody because he does not
5 pose a danger or flight risk that warrants post-final-order detention, regardless of whether his
6 removal can be effectuated within a reasonable period of time. *Sun v. Santacruz*, No. 5:25-cv-
7 02198-JLS-JC, 2025 WL 2730235, at *6 (C.D. Cal. Aug. 26, 2025) (finding that neither risk was
8 present where ICE first released the petitioner upon finding, at least implicitly, that the petitioner
9 was neither a flight risk nor a danger to the community, and absent new facts to indicate risk of
10 flight or to the community); *Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL
11 1918679, at *7 (E.D. Cal. July 11, 2025) (reaching a similar conclusion where the petitioner
12 “attended every check-in and court hearing since he arrived in the United States”); *Diaz v. Kaiser*,
13 No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (similar). This is especially
14 so because the ICE *already* released Mr. Zheng from detention in 2014 and 2015, after necessarily
15 determining then that he was neither a flight risk nor a danger to the community, and there is no
16 suggestion from any party that that has changed.

17 76. Thus, ICE violated its own regulations in at least three ways by failing to provide Mr.
18 Zheng a pre-deprivation hearing in front of a neutral adjudicator before his re-detention, by failing
19 to establish that there were indeed changed circumstances that rendered Mr. Zheng’s removal
20 reasonably foreseeable before revoking his OSUP, and by failing to make the changed
21 circumstances determination on or before the revocation. In addition, ICE failed to provide Mr.
22 Zheng adequate notice, evidence, or an opportunity to rebut the alleged “changed circumstances.”

23 **Petitioner’s Protected Liberty Interest in His Release**

24 77. Petitioner Mr. Zheng’s liberty from immigration custody is protected by the Due Process
25 Clause: “Freedom from imprisonment—from government custody, detention, or other forms of
26 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
27 *Zadvydas*, 533 U.S. at 690.

1 78. For over eleven years, since 2014, Mr. Zheng has exercised that freedom pursuant to his
2 OSUP. He thus retains a weighty liberty interest under the Due Process Clause of the Fifth
3 Amendment in avoiding re-incarceration, which is not diminished by the supervised nature of his
4 release. *Zadvydas*, 533 U.S. at 679 (“[A] noncitizen’s liberty interest is not diminished by their
5 lack of a legal right to live at large, for the choice at issue here is between imprisonment and
6 supervision under release conditions that may not be violated and their liberty interest is strong
7 enough to raise a serious constitutional problem with indefinite detention.”); *see also Young v.*
8 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973);
9 *Morrissey v. Brewer*, 408 U.S. 471, 482–483 (1972).

10 79. Moreover, the Supreme Court has recognized that post-removal order detention is
11 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
12 701. In this case, in the absence of any travel document that actually permits Mr. Zheng’s removal
13 to China, his removal is neither foreseeable nor reasonably foreseeable. Thus, his continued
14 detention is unconstitutional.

15 80. Just as importantly, Mr. Zheng has continued presenting himself before ICE for his regular
16 check-in appointments for over eleven years, where ICE has not sought to re-arrest him during this
17 time. ICE instead gave him future dates and times to appear again each year. Mr. Zheng continued
18 to comply even despite ICE’s sudden and unwarranted re-scheduling him for an appointment to
19 pick up his travel documents. On October 15, 2025, Mr. Zheng attended his check-in and fully
20 complied in good faith that ICE would abide by its own regulations related to his OSUP.

21 81. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
22 in “his continued liberty.” *Morrissey*, 408 U.S. at 481–82. The Court noted that, “subject to the
23 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and
24 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further
25 noted that “the parolee has relied on at least an implicit promise that parole will be revoked only
26 if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee,
27 although indeterminate, includes many of the core values of unqualified liberty and its termination
28

1 inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the
2 liberty is valuable and must be seen within the protection of the [Fifth] Amendment.” *Id.*

3 82. This basic principle—that individuals have a liberty interest in their release—has been
4 reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.,*
5 *Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce
6 prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*,
7 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty
8 interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the
9 issue of whether a specific conditional release rises to the level of a protected liberty interest,
10 “[c]ourts have resolved the issue by comparing the specific conditional release in the case before
11 them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v.*
12 *Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
13 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in
14 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty
15 interest that entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*,
16 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

17 83. In fact, it is well-established that an individual maintains a protectable liberty interest even
18 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
19 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
20 considerations support the notion that an inmate released on parole by mistake, because he was
21 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
22 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
23 be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal
24 quotation marks and citation omitted).

25 84. Here, when this Court ““compar[es] the specific conditional release in [Petitioner’s case],
26 with the liberty interest in parole as characterized by *Morrissey*,”” it is clear that they are strikingly
27 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Zheng’s release “enables
28 him to do a wide range of things open to persons” who have never been in custody or convicted

1 of any crime, including to live at home, work with his community, and “be with family and friends
2 and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

3 85. Since his release in 2015, Mr. Zheng has complied with conditions of his release. He has
4 been focused on rebuilding his life, including by reconnecting with family and securing
5 employment after having been incarcerated and then detained for years. Precedents from the
6 Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his
7 continued release from detention.

8 **Petitioner’s Liberty Interest Mandated a Due Process Hearing Before any Re-Detention**

9 86. Petitioner Mr. Zheng asserts that, here, (1) where his detention is civil, (2) where he has
10 diligently complied with ICE’s reporting requirements on a regular basis for over eleven years, (3)
11 where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that
12 would justify his detention, and (5) where on information and belief ICE officers arrested
13 Petitioner merely to fulfill an arrest quota because his removal is not reasonably foreseeable and
14 potentially indefinite, as there is no valid travel document available on which to remove Mr. Zheng,
15 due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any
16 re-arrest.

17 87. “Adequate, or due, process depends upon the nature of the interest affected. The more
18 important the interest and the greater the effect of its impairment, the greater the procedural
19 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
20 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481–82). This Court must
21 “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
22 administration of” its immigration laws in order to determine what process he is owed to ensure
23 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
24 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
25 “first, the private interest that will be affected by the official action; second, the risk of an erroneous
26 deprivation of such interest through the procedures used, and the probative value, if any, of
27 additional or substitute procedural safeguards; and finally the government’s interest, including the
28 function involved and the fiscal and administrative burdens that the additional or substitute

1 procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
2 424 U.S. 319, 335 (1976)).

3 88. The Supreme Court “usually has held that the Constitution requires some kind of a hearing
4 before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127
5 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
6 only remedies the State could be expected to provide” can post-deprivation process satisfy the
7 requirements of due process. *Id.* at 129. Moreover, it is only where “one of the variables in
8 the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the
9 kind of deprivation at issue” that “the State cannot be required constitutionally to do the impossible
10 by providing predeprivation process,” and thus avoid providing pre-deprivation process. *Id.*

11 89. Because, in this case, the provision of a pre-deprivation hearing was both possible and
12 valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner
13 with notice and a hearing *prior* to any re-incarceration and revocation of his OSUP. *See Morrissey*,
14 408 U.S. at 481–82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S.
15 at 136-37; *see also Youngberg v. Romeo*, 457 U.S. 307, 321–24 (1982); *Lynch v. Baxley*, 744 F.2d
16 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
17 proceedings may not constitutionally be held in jail pending the determination as to whether they
18 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of
19 [Petitioner’s] liberty,” *Haywood*, 769 F.2d at 1357, and required a pre-deprivation hearing before
20 a neutral adjudicator, such as this Court, which ICE failed to provide.

21 90. Furthermore, that basic principle—that individuals placed at liberty are entitled to process
22 before the government imprisons them—has particular force here, where Mr. Zhang was already
23 released from detention after ICE found on two separate occasions that his removal was not
24 reasonably foreseeable and that he need not be incarcerated to prevent flight or to protect the
25 community, and no circumstances have changed that would justify his re-arrest, as there is no
26 current and valid travel document for Mr. Zheng and he has not violated any of his conditions
27 under OSUP. In fact, ICE has been unable to secure a travel document for Mr. Zheng since at least
28 2014. Nothing has changed—ICE has failed to obtain a travel document since Mr. Zheng’s

1 detention in 2014, and then again in 2015, and now over ten years since he was last released, ICE
2 was unable to obtain a travel document on or *before* unlawfully revoking his OSUP. In addition,
3 as discussed above, Mr. Zheng has made at least two attempts of his own accord to obtain travel
4 documents from China. Further, in 2025, Mr. Zheng provided ICE with the requested travel
5 document and passport photos, and ever since ICE's re-arrest on October 15, 2025, ICE has once
6 more been unable to obtain a travel document for Mr. Zheng. That is because ICE will not be able
7 to obtain a travel document for Mr. Zheng. As Chinese officials have already informed Mr. Zheng,
8 they cannot establish his nationality or citizenship, despite the numerous attempts and efforts Mr.
9 Zheng has made, as he does not possess evidence of a Chinese passport or birth certificate, and the
10 consulate cannot identify his records in their system. As this Court has held, "significant
11 likelihood" requires something more than a mere possibility that removal will occur. *Yan-Ling X.*,
12 2025 WL 3123793, at *4. Evidence that "there is at least some possibility that" the designated
13 country of removal "will accept the petitioner at some point . . . is not the same as
14 a significant likelihood that the petitioner will be accepted in the reasonably foreseeable future."
15 *Id.* (citation omitted). Given that China has refused to issue Mr. Zheng a travel document because
16 they cannot identify him and because he is not in their records system, there is no evidence or
17 likelihood that China *will now* accept Mr. Zheng for removal in the reasonably foreseeable future,
18 or that China provided any information to Respondents to indicate that there is a significant
19 likelihood that Mr. Zheng will be issued a travel document, and thus Respondents cannot establish
20 that Mr. Zheng's removal is reasonably foreseeable.

21 91. Obtaining a travel document after Petitioner's unlawful detention would not mitigate the
22 situation. No travel document existed at the time that Petitioner was re-detained, and therefore his
23 unlawful re-detention is based on the October 15 revocation of his OSUP and not on new
24 circumstances. *Tran*, 2025 WL 3005347, at *3 (ICE was unable to obtain travel documents for the
25 petitioner during the petitioner's previous detention and in the 15 years that the petitioner was on
26 OSUP, and did not submit the travel document until after the petitioner's re-arrest, and though ICE
27 later obtained the travel document and alleged they "will have a plane reservation for [the
28 petitioner] to depart in about two weeks," the court found that the petitioner was detained "on the

1 June 18th revocation and not based on the new circumstances.”)

2 **Petitioner’s Private Interest in His Liberty is Profound**

3 92. Under *Morrissey* and its progeny, individuals conditionally released from serving a
4 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
5 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
6 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
7 constitutional due process before he is re-incarcerated—apply with even greater force to
8 individuals like Mr. Zheng, who have been released after civil removal proceedings, rather than
9 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
10 conviction. Parolees and probationers have a diminished liberty interest given their underlying
11 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
12 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
13 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
14 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
15 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. This extends to noncitizens released from immigration
16 detention on pre-parole, parole, or probation. *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032
17 (N.D. Cal. 2025); *Diaz*, 2025 WL 1676854, at *2; *Rosado v. Figueroa*, No. CV 25-02157 PHX
18 DLR (CDB), 2025 WL 2337099, at *12-13 (D. Ariz. Aug. 11, 2025). Thus, Mr. Zheng retains a
19 truly weighty liberty interest even though he is under supervised release prior to his re-arrest.

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

1 94. Thus, it is clear that there is a profound private interest at stake in this case, which must be
2 weighed heavily when determining what process he is owed under the Constitution. *See Mathews*,
3 424 U.S. at 334-35.

4 **The Government's Interest in Keeping Petitioner in Detention is Low and the Burden on the**
5 **Government to Release Him from Custody is Minimal**

6 95. The government's interest in keeping Petitioner Mr. Zheng in detention without a due
7 process hearing is low, and when weighed against his significant private interest in his liberty, the
8 scale tips sharply in favor of releasing Petitioner from custody unless and until the government
9 demonstrates that his removal is reasonably foreseeable or that he is a flight risk or danger to the
10 community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court
11 considers that the process Petitioner seeks—release from after ICE *already* released Mr. Zheng
12 from detention after seven months, all of which occurred over *eleven years ago* and where nothing
13 in the interim has changed to warrant re-detention after —is a standard course of action for the
14 government. In the alternative, providing Petitioner Mr. Zheng with a hearing before a neutral
15 decisionmaker to determine whether there is evidence that his removal is reasonably foreseeable
16 or that he is a flight risk or danger to the community would impose only a *de minimis* burden on
17 the government, because the government routinely conducts these reviews for individuals in
18 Petitioner's same circumstances. 8 C.F.R. § 241.4(e)–(f).

19 96. As immigration detention is civil, it can have no punitive purpose. The government's only
20 interests in holding an individual in immigration detention can be to prevent danger to the
21 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533
22 U.S. at 690. Moreover, the Supreme Court has made clear that *indefinite detention of noncitizens*
23 *who cannot be removed to the country in the removal order is unconstitutional*. In this case, the
24 government cannot plausibly assert that it had a sudden interest in detaining Mr. Zheng due to
25 alleged dangerousness, or due to a change in the foreseeability of his removal to China, as his
26 circumstances have not changed since his release from ICE custody in 2015.

27 97. Since being released from ICE detention in 2015, Mr. Zheng has continued to appear before
28 ICE on a regular basis for his check-ins appointments. *See Morrissey*, 408 U.S. at 482 (“It is not

1 sophistic to attach greater importance to a person's justifiable reliance in maintaining his
2 conditional freedom so long as he abides by the conditions on his release, than to his mere
3 anticipation or hope of freedom'" (quoting *United States ex rel. Bey v. Connecticut Board of*
4 *Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

5 98. As to flight risk, Mr. Zheng's post-release conduct in the form of compliance with his
6 check-in requirements *and multiple travel document applications, at the direction of ICE and of*
7 *his own accord*, further confirms that he is not a flight risk and that he is likely to present himself
8 at any future ICE appearances, as he always has done. In addition, Mr. Zheng even voluntarily
9 attended the additional appointment that ICE scheduled this year and provided them with his
10 renewed travel document request, as instructed. The government's interest in detaining him at this
11 time is therefore low. That ICE has a new policy to make a minimum number of arrests each day
12 under the new administration does not constitute a material change in circumstances or increase
13 the government's interest in detaining him.¹⁴ Moreover, nothing has changed regarding the lack of
14 foreseeability of his removal to China.

15 99. Moreover, the "fiscal and administrative burdens" that a pre-deprivation hearing would
16 impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Zheng does not seek a
17 unique or expensive form of process, but rather a routine hearing regarding whether his release
18 should be revoked and whether he should be re-incarcerated.

19 100. Release from custody until ICE assesses and demonstrates that Mr. Zheng is a flight
20 risk or danger to the community, or that his detention is not going to be indefinite, is far *less* costly
21 and burdensome for the government than keeping him detained. As the Ninth Circuit noted in
22 2017, which remains true today, "[t]he costs to the public of immigration detention are
23 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million."
24 *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a hearing for
25 Petitioner at which the government bears the burden of justifying his continued detention, the
26 government would bear no additional cost if the hearing is scheduled within seven days, rather
27 than allowing Petitioner to sit in detention for days or weeks awaiting a hearing.

28 _____
¹⁴ *Id.*

1 **Without Release from Custody until the Government Provides a Due Process Hearing, the**
2 **Risk of an Erroneous Deprivation of Liberty is High**

3 101. Releasing Petitioner Mr. Zheng from custody until he is provided a pre-deprivation
4 hearing would decrease the risk of him being erroneously deprived of his liberty. Before he can be
5 lawfully detained, he must be provided with a hearing before a neutral adjudicator (such as an
6 Immigration Judge), at which the government is held to show that his detention will not be
7 indefinite, or that the circumstances have changed since his release in 2015 such that evidence
8 exists to establish that Petitioner is a danger to the community or a flight risk.

9 102. Under the process that ICE maintains is lawful—which affords Mr. Zheng no
10 process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as
11 ICE did on October 15, 2025. Mr. Zheng has already been erroneously deprived of his liberty when
12 he was detained at his check-in, and the risk he will continue to be deprived is high if ICE is
13 permitted to keep him detention after making a unilateral decision to re-detain him. Pursuant to 8
14 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate
15 Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for an
16 oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and
17 can decide whether the agency wants to hold Petitioner. 8 C.F.R. § 241.4(e)-(f).

18 103. By contrast, the procedure Mr. Zheng seeks—release from custody and no further
19 re-detention until he is provided a hearing in front of a neutral adjudicator at which the government
20 can prove that his detention will not be indefinite, or otherwise that the circumstances have
21 changed since his release in 2015 to justify his detention—is much more likely to produce accurate
22 determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375,
23 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and
24 assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable
25 when just determinations are made after hearing only one side”). “A neutral judge is one of the
26 most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
27 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The
28 Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be

1 decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations.
2 *Diouf v. Napolitano* (“*Diouf IP*”), 634 F.3d 1081, 1091–92 (9th Cir. 2011).

3 104. Due process also requires consideration of alternatives to detention at any custody
4 redetermination hearing that may occur. The primary purpose of immigration detention is to ensure
5 removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related
6 to this purpose if, as here, removal is not actually foreseeable. Accordingly, alternatives to
7 detention must be considered in determining whether Mr. Zheng’s re-incarceration is warranted.

8 **Right to Constitutionally Adequate Procedures Prior to Third Country Removal**

9 105. Prior to any third country removal, ICE must provide Mr. Zheng with sufficient
10 notice and an opportunity to respond and apply for fear-based relief as to that country, in
11 compliance with the INA, due process, and the CAT, which is a binding international treaty.¹⁵
12 Currently, DHS has a policy of removing or seeking to remove individuals to third countries
13 without first providing constitutionally adequate notice of third country removal, or any
14 meaningful opportunity to contest that removal if the individual has a fear of persecution or torture
15 in that country. *See Nightingale Decl.* at Exhibit D (DHS Policy Regarding Third Country
16 Removal); *see also Nightingale Decl.* at Exhibit E (DHS Memo Following the Supreme Court’s
17 Order). This policy clearly violates due process, the United States’ obligations under the CAT, and
18 is contrary to Ninth Circuit precedent. “Other courts in this circuit have recognized that this policy
19 is unconstitutional, and this Court agrees with those well-reasoned decisions.” *Vu v. Noem*, No.
20 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025).

21 **a. Removal proceedings pursuant to 8 U.S.C. § 1229a (INA § 240)**

22 106. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant
23 Responsibility Act (IIRIRA). The Act generally retained prior procedures for removal hearings for
24 all noncitizens—i.e., full immigration court hearings, appellate review before the BIA, and federal
25 court review. *See* 8 U.S.C. § 1229a; 8 U.S.C. § 1252(a). In these removal proceedings (commonly
26 referred to as “Section 240” proceedings), the noncitizen is entitled to select a country of removal.
27 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f) (“[T]he immigration judge shall notify
28

¹⁵ *See supra* n.4.

1 the respondent that if he or she is finally ordered removed, the country of removal will in the first
2 instance be the country designated by the respondent . . .”). The IJ will designate the country
3 where the person “is a subject, national, or citizen,” if either the noncitizen does not select a country
4 or as an alternative in the event the noncitizen’s designated country does not accept the individual.
5 8 U.S.C. § 1231(b)(2)(D). The IJ also may designate alternative countries, as specifically set out
6 by 8 U.S.C. § 1231(b)(2)(E). For individuals placed in Section 240 proceedings upon arrival, the
7 statute provides designation to the country from which the individual boarded a vessel or aircraft
8 and then can consider alternative countries. *See* 8 U.S.C. § 1231(b)(1); *see also* 8 C.F.R.
9 § 1240.10(f).

10 107. An Immigration Judge must provide sufficient notice and opportunity to apply for
11 protection from a designated country of removal. 8 C.F.R. § 1240.10(f) (providing that the
12 “immigration judge shall notify the respondent” of designated countries of removal) (emphasis
13 added); 8 C.F.R. § 1240.11(c)(1)(i) (providing that the IJ shall “[a]dvice the [noncitizen] that he
14 or she may apply for asylum in the United States or withholding of removal to [the designated
15 countries of removal]”).

16 108. For individuals determined to be ineligible for asylum, Congress further provided,
17 with certain exceptions not relevant here, that “notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)],
18 the Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney
19 General [(i.e., an immigration judge)] decides that [the noncitizen’s] life or freedom would be
20 threatened in that country because of [the noncitizen’s] race, religion, nationality, membership in
21 a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§
22 208.16, 1208.16. This form of protection, known as “withholding of removal,” is mandatory, i.e.,
23 it cannot be denied to eligible individuals in the exercise of discretion. Unlike asylum, the
24 protection of withholding of removal is country specific.

25 109. Individuals in Section 240 proceedings who are ineligible for withholding of
26 removal, are still entitled to receive protection under the CAT, in the form of withholding or
27 deferral of removal, upon demonstrating a likelihood of torture if removed to the designated
28 country of removal. *See* Foreign Affairs Reform and Restructuring Act (FARRA) of 1998

1 (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a);
2 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. § 1231(b)(3), CAT protection is
3 mandatory. *Id.* With respect to any individual granted deferral of removal under CAT, the IJ “shall
4 also inform the [noncitizen] that removal has been deferred only to the country in which it has
5 been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be
6 removed at any time to another country where he or she is not likely to be tortured.” 8 C.F.R. §§
7 208.17(b)(2), 1208.17(b)(2).

8 110. An Immigration Judge may only terminate a grant of CAT protection based on
9 evidence that the person will no longer face torture. DHS must move for a new hearing and provide
10 evidence “relevant to the possibility that the [noncitizen] would be tortured in the country to which
11 removal has been deferred and that was not presented at the previous hearing.” 8 C.F.R. §§
12 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice “of the time,
13 place, and date of the termination hearing,” and must inform the noncitizen of the right to
14 “supplement the information in his or her initial [withholding or CAT] application” “within 10
15 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail).”
16 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2)

17 111. Individuals in Section 240 proceedings are entitled to an administrative appeal to
18 the BIA along with an automatic stay of deportation while the appeal is pending, and to seek
19 judicial review of an adverse administrative decision by filing a petition for review in the court of
20 appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

21 **b. Statutory scheme for removal to a third country**

22 112. Congress established the statutory process for designating countries to which
23 noncitizens may be removed, 8 U.S.C. § 1231(b)(1)–(3).¹⁶

24 113. Subsection (b)(1) applies to noncitizens “[a]rriving at the United States,” including
25 from a contiguous territory, but expressly contemplates arrival via a “vessel or aircraft.” It

26 ¹⁶ References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for
27 functions related to carrying out a removal order and to the Attorney General for functions related
28 to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney
General has delegated the latter functions to the immigration courts and BIA. *See* 8 C.F.R. §§
1208.16, 1208.17, 1208.31, 1240.10(f), 1240.12(d).

1 designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C.
2 § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled),
3 § 1231(b)(1)(C) (alternative countries).

4 114. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1),
5 designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C.
6 § 1231(b)(2)(A) (noncitizen's designation of a country of removal), 1231(b)(2)(B) (limitation on
7 designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country),
8 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries)

9 115. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision
10 prohibiting removal of persons to countries where they face persecution or torture. Specifically,
11 § 1231(b)(3)(A), entitled "Restriction on removal to a country where [noncitizen's] life or freedom
12 would be threatened," reads: Notwithstanding paragraphs [b](1) and [b](2), the Attorney General
13 may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen's]
14 life or freedom would be threatened in that country because of the [noncitizen's] race, religion,
15 nationality, membership in a particular social group, or political opinion. *Id.* § 1231(b)(3)(A)
16 (emphasis added).

17 116. Similarly, with respect to the CAT, the implementing regulations allow for removal
18 to a third country, but only "where he or she is not likely to be tortured." 8 C.F.R. §§ 208.17(b)(2),
19 1208.17(b)(2).

20 117. In *Jama v. Immigr. & Customs Enf't*, the Supreme Court addressed the designation
21 procedure under Subsection (b)(2). 543 U.S. 335 (2005). Critically, the Court stated that
22 noncitizens who "face persecution or other mistreatment in the country designated under
23 § 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief
24 under an international agreement prohibiting torture . . ." *Jama*, 543 U.S. at 348 (citing 8 U.S.C.
25 §§1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a)).

26 118. Although individuals granted CAT protection may be removed to a third country,
27 the regulations provide that they may not be removed to a country where they are likely to be
28 tortured: "The immigration judge shall also inform the [noncitizen] that removal has been deferred

1 only to the country in which it has been determined that the [noncitizen] is likely to be tortured,
2 and that the [noncitizen] may be removed at any time to another country where he or she is not
3 likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

4 119. Notably, the regulations also provide that protection under CAT may be terminated
5 based on evidence that the person will no longer face torture but nevertheless provides certain
6 protection to noncitizens. First, the regulations require DHS to move for a new hearing, requiring
7 that DHS support their motion for the new hearing with evidence “relevant to the possibility that
8 the [noncitizen] would be tortured in the country to which removal has been deferred and that was
9 not presented at the previous hearing. 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). Second, even if a
10 new hearing is granted, the regulations require that the IJ provide the noncitizen with notice “of
11 the time, place, and date of the termination hearing. Such notice shall inform the [noncitizen] that
12 the [noncitizen] may supplement the information in his or his initial application for withholding
13 of removal under the CAT and shall provide that the [noncitizen] must submit any such
14 supplemental information within 10 calendar days of service of such notice (or 13 calendar days
15 if service of such notice was by mail).” 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2). Thus, not only is
16 the noncitizen provided notice, but also an opportunity to submit documentation in support of their
17 claim for protection.

18 **c. DHS’ obligation to provide notice and an opportunity to present a fear-**
19 **based claim before removal to a third country**

20 120. For individuals in removal proceedings, the designation of a country of removal
21 (or, at times, countries in the alternative that the IJ designates) on the record provides notice and
22 an opportunity to permit a noncitizen who fears persecution or torture in the designated country
23 (or countries) to file an application for protection. *See* 8 C.F.R. § 1240.10(f) (stating that
24 “immigration judge shall notify the [noncitizen]” of proposed countries of removal); 8 C.F.R. §
25 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of
26 the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the
27 immigration judge shall . . . [a]dvice [the noncitizen] that he or she may apply for asylum in the
28 United States or withholding of removal to those countries[.]”)

1 121. Pursuant to 8 U.S.C. § 1231(b)(3)(A), courts repeatedly have held that individuals
2 cannot be removed to a country that was not properly designated by an IJ if they have a fear of
3 persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999);
4 *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th
5 Cir. 2004); *cf. Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005) (per curiam)
6 (permitting designation of third country where individuals received “ample notice and an
7 opportunity to be heard”).

8 122. Providing such notice and opportunity to present a fear-based claim prior to
9 deportation also implements the United States’ obligations under international law. *See* United
10 Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United
11 Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S.
12 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8
13 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980
14 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the
15 language of Article 33 of the United Nations Protocol”); *see also* United Nations Convention
16 Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for
17 signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114;
18 FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) (“It shall be the policy of the United
19 States not to expel, extradite, or otherwise effect the involuntary return of any person to a country
20 in which there are substantial grounds for believing the person would be in danger of being
21 subjected to torture, regardless of whether the person is physically present in the United States.”);
22 United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation
23 of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 (“Furthermore, the person
24 at risk [of torture] should never be deported to another State where he/she may subsequently face
25 deportation to a third State in which there are substantial grounds for believing that he/she would
26 be in danger of being subjected to torture.”)

27 123. As the Supreme Court has explained, such language “generally indicates a
28 command that admits of no discretion on the part of the person instructed to carry out the

1 directive,” *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007)
2 (quoting *Ass’n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C.
3 Cir. 1994)); *see also Black’s Law Dictionary* (11th ed. 2019) (“Shall” means “[h]as a duty to; more
4 broadly, is required to This is the mandatory sense that drafters typically intend and that courts
5 typically uphold.”); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that “shall”
6 language in a statute was unambiguously mandatory). Accordingly, any imminent third country
7 removal fails to comport with the statutory obligations set forth by Congress in the INA and is
8 unlawful. Several district courts have already found as much. *See Hoac*, 2025 WL 1993771, at *7;
9 *Phan*, 2025 WL 1993735, at *7; *J.R.*, 2025 WL 1810210, at *4.

10 124. Meaningful notice and opportunity to present a fear-based claim prior to
11 deportation to a country where a person fears persecution or torture are also fundamental due
12 process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149
13 F. App’x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash.
14 2019). Similarly, a “last minute” IJ designation of a country during removal proceedings that
15 affords no meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional
16 due process.” *Andriasian*, 180 F.3d at 1041.

17 125. The federal government has repeatedly acknowledged these obligations. In June
18 2001, the former Immigration and Naturalization Service drafted a document entitled “Notice to
19 Alien of Removal to Other than Designated Country (Form I-913),” which would have provided
20 noncitizens with written notice of deportation to a third country and a 15-day automatic stay of
21 removal to allow the noncitizen to file an unopposed motion to reopen removal proceedings and
22 accompanying Form I-589 (protection application) before an IJ. *See D.V.D. v. U.S. Department of*
23 *Homeland Security*, 1:25-cv-10676, Dkt. 1-2 (D. Mass. Mar. 23, 2025) Records Produced in
24 Response to Freedom of Information Act (FOIA) Litigation, *Nat. ’l Immigr. Litigation Alliance v.*
25 *ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI00055* 9-14. Almost
26 twenty years later, in June 2020, DHS again drafted a model “Notice of Removal to Other than
27 Designated Country,” that likewise provided these protections. *See id.* at Dkt. 1-3, Records
28 Produced in Response to FOIA Litigation, *Nat. ’l Immigr. Litigation Alliance v. ICE*, No. 1:22-cv-

1 11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI-00055* 8 (Notice).¹⁷ Although neither
2 form was ever published, both reflect how notice must be provided to be meaningful.¹⁸

3 126. Additionally, in 2005, in jointly promulgating regulations implementing 8 U.S.C.
4 § 1231(b), the Departments of Justice and Homeland Security asserted that “[a noncitizen] will
5 have the opportunity to apply for protection as appropriate from any of the countries that are
6 identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” Execution of
7 Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan. 5,
8 2005) (codified at 8 C.F.R. pts. 241, 1240, 1241) (supplementary information). Furthermore, the
9 Departments contemplated that, in cases where ICE sought removal to a country that was not
10 designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv)
11 or (b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow
12 the noncitizen to apply for protection. *Id.*

13 127. Furthermore, consistent with the above-cited authorities, at oral argument in
14 *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General
15 represented that the government must provide a noncitizen with notice and an opportunity to
16 present a fear-based claim before that noncitizen can be deported to a non-designated third
17 country. Specifically, at oral argument in that case, the following exchange between Justice Kagan
18 and Vivek Suri, Assistant to the Solicitor General, took place:

19 JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was
20 willing to accept [a noncitizen]. If -- if -- if that [noncitizen] was currently in withholding
21 proceed -- proceedings, you couldn't put him on a plane to that third country, could you?

22 MR. SURI: We could after we provide the [noncitizen] notice that we were going to do
23 that.

24 JUSTICE KAGAN: Right.

25 MR. SURI: But, without notice –

26
27 ¹⁷ The complete production is available at <https://tinyurl.com/2t868ykr>. Pages 1-7 (Bates 2022-
ICLI-00055* 1-7) indicate that the notice was drafted on or about May 21, 2020.

28 ¹⁸ The forms fell short of providing a meaningful opportunity to present a fear-based claim,
however, because they placed the burden on the noncitizen to file a motion to reopen.

1 JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have
2 to provide him notice, and if he had a fear of persecution or torture in that country, he
3 would be given an opportunity to contest his removal to that country. Isn't that right?

4 MR. SURI: Yes, that's right.

5 JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in
6 withholding proceedings, you can't put them on a plane to anywhere right now, isn't that
7 right?

8 MR. SURI: Certainly, I agree with that, yes.

9 JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you
10 put it, in the eyes of the law. In the eyes of the law, you cannot put one of these
11 [noncitizens] on a plane to any place, either the -- either the country that's referenced in
12 the removal order or any other country, isn't that right?

13 MR. SURI: Yes, that's right.

14 *See* Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

15 128. Notice is only meaningful if it is presented sufficiently in advance of the deportation
16 to stop the deportation, is in a language the person understands, and provides for an automatic stay
17 of removal for a time period sufficient to permit the filing of a motion to reopen removal
18 proceedings so that a third country for removal may be designated as required under the regulations
19 and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F.
20 Supp. 3d at 1009 (“A noncitizen must be given sufficient notice of a country of deportation [such]
21 that, given his capacities and circumstances, he would have a reasonable opportunity to raise and
22 pursue his claim for withholding of deportation.”)

23 129. An opportunity to present a fear-based claim is only meaningful if the noncitizen is
24 not deported before removal proceedings are reopened. *See Aden*, 409 F. Supp. 3d at 1010 (holding
25 that merely giving petitioner an opportunity to file a discretionary motion to reopen “is not an
26 adequate substitute for the process that is due in these circumstances” and ordering reopening);
27 *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to determinate whether
28 designation is appropriate).

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

5 **FIRST CAUSE OF ACTION**

6 **Unlawful Re-Detention – Arbitrary and Capricious Agency Action**

7 131. Petitioner Mr. Zheng re-alleges and incorporates herein by reference, as if set forth
8 fully herein, the allegations in all the preceding paragraphs.

9 132. Petitioner was previously released by Respondents because his removal was not
10 foreseeable and he did not pose a danger or flight risk. Respondents have authority to revoke
11 release *only if* circumstances have changed. 8 C.F.R. § 241.13(i)(2); 8 C.F.R. § 1231(a)(6).

12 133. Respondents' actions are arbitrary, capricious, an abuse of discretion, and contrary
13 to law. 5 U.S.C. § 706(a)(2)(A). The fact that a decision-making process involves discretion does
14 not prevent an individual from having a protectable liberty interest. *Young*, 520 U.S. at 150;
15 *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal. 2018). Just like people on pre-
16 parole, parole, probation status, bail, or bond have a liberty interest, so too does Petitioner have a
17 liberty interest in remaining out of custody on his Forms I-220B OSUP. *Ortega v. Bonnar*, 415 F.
18 Supp. 3d 963, 2019 WL 6251231 (N.D. Cal. 2019); *J.L.R.P.*, 2025 WL 3190589, at *10 (habeas
19 granted enjoining and restraining the government from re-detaining the petitioner “unless there are
20 material changed circumstances and a neutral decisionmaker determines that there is a significant
21 likelihood of petitioner’s removal in the reasonably foreseeable future...”); *Garcia-Ayala*, 2025
22 WL 2597508, at *5 (TRO prohibiting the government from re-detaining the petitioner without
23 notice and a pre-deprivation hearing before a neutral decisionmaker); *Diaz*, 2025 WL 1676854
24 (TRO prohibiting the government from re-detaining the petitioner without notice and a hearing
25 before a neutral adjudicator).

26 134. Petitioner Mr. Zheng should therefore be immediately released, or at a minimum,
27 provided with a full and fair hearing before a neutral adjudicator where the government bears the
28

1 burden of showing that circumstances have changed such that his removal is reasonably
2 foreseeable, and otherwise evidence of his dangerousness and flight risk. *Id.*

3 **SECOND CAUSE OF ACTION**

4 **Violation of Procedures for Revocation of Release**

5 135. Petitioner Mr. Zheng re-alleges and incorporates herein by reference, as if set forth
6 fully herein, the allegations in all the preceding paragraphs.

7 136. Respondents must notify Petitioner of the reason for his detention. 8 C.F.R. §
8 241.13(i)(3). The regulations also require Respondents to afford Petitioner an initial interview
9 promptly after their detention at which he can respond to the purported reasons for revocation. *Id.*

10 137. Respondents have not provided Petitioner Mr. Zheng adequate and timely notice of
11 the reasons for revocation. Respondents also have not timely or adequately provided him with an
12 initial interview or an opportunity to respond.

13 **THIRD CAUSE OF ACTION**

14 **Violation of the INA and Applicable Regulations**

15 138. Petitioner Mr. Zheng re-alleges and incorporates herein by reference, as if set forth
16 fully herein, the allegations in all the preceding paragraphs.

17 139. The INA provides for detention during the ninety (90) day “removal period” that
18 begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. § 1231(a)(1).
19 After the ninety (90) day removal period, the INA and its applicable regulations provide that
20 detaining noncitizens is generally permissible *only* upon notice to the noncitizen and after an
21 individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R.
22 § 241.4(d), (f), (h) & (k).

23 140. Respondents are not permitted to detain Petitioner on the basis of his prior order of
24 removal and without any determination of whether circumstances have changed such that his
25 removal is reasonably foreseeable, and a determination of his danger and flight risk, by a neutral
26 adjudicator. This is especially true where, as here, Petitioner Mr. Zheng received a determination
27 from the agency issuing his Form I-220B that permitted him to remain out of custody in the first
28 place. 8 C.F.R. § 241.13(i)(2)-(3).

FOURTH CAUSE OF ACTION

Procedural Due Process – Right to a Pre-Deprivation Hearing

U.S. Const. amend. V

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

142. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

143. Other than as punishment for a crime, due process permits the government to take away liberty only “in certain special and narrow nonpunitive circumstances ... where a special justification ... outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690. Such special justification exists only where a restraint on liberty bears a “reasonable relation” to permissible purposes. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992). In the immigration context, those purposes are “ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quotations omitted).

144. Those substantive limitations on detention are closely intertwined with procedural due process protections. *Foucha*, 504 U.S. 78-80. Noncitizens have a right to adequate procedures to determine whether their detention in fact serves the purposes of ensuring their appearance or protecting the community. *Id.* at 79; *Zadvydas*, 533 U.S. 692; *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 949 (9th Cir. 2008). Where laws and regulations fail to provide such procedures, the habeas court may assess whether the noncitizen’s immigration detention is reasonably related to the purposes of ensuring his appearance or protecting the community, *Zadvydas*, 533 U.S. at 699, or require release.

145. Under this framework, Petitioner’s release is required because his re-detention violates his due process rights.

146. Further, Petitioner had a vested liberty interest in his release. Due Process does not permit the government to strip him of that liberty without a future hearing prior to any re-detention. *See Morrissey*, 408 U.S. at 487-488.

1 147. Because Petitioner's detention is unconstitutionally indefinite, it is unlawful.
2 Moreover, because Petitioner faces detention without any meaningful determination of whether
3 circumstances have changed such that his removal is reasonably foreseeable, and whether he poses
4 a danger or flight risk, his detention violates due process.

5 148. Petitioner's re-detention is unconstitutionally indefinite because he cannot be
6 removed to China. Thus, his removal is not reasonably foreseeable in this case, and the government
7 has not provided him with notice, evidence, or an opportunity to be heard on this issue either before
8 arbitrarily re-detaining him. His continued detention without any reasonably foreseeable end point
9 is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Zadvydas v.*
10 *Davis*, 533 U.S. at 701.

11 149. Moreover, because Petitioner poses no danger or flight risk, his detention was and
12 is not reasonably related to its purposes, and is unlawful. Because Petitioner faces detention
13 without any meaningful determination of danger or flight risk, his detention violates due process.

14 150. Further, because he was not provided with a hearing prior to his re-detention, and
15 his continuing unlawful and constitutionally indefinite detention without adequate process is an
16 ongoing violation of his due process rights, the only remedy of this violation is Petitioner Mr.
17 Zheng's immediate release from immigration detention, as well as a future hearing before a neutral
18 adjudicator prior to any re-detention. At the hearing, the neutral adjudicator would evaluate, *inter*
19 *alia*, whether his removal is reasonably foreseeable and otherwise whether circumstances have
20 changed such that he now poses a danger or a flight risk. During any custody redetermination
21 hearing that occurs, the neutral adjudicator must consider alternatives to detention when
22 determining whether Petitioner's re-incarceration is warranted.

23 **FIFTH CAUSE OF ACTION**

24 **Substantive Due Process - Unconstitutionally Indefinite Detention**

25 **U.S. Const. amend. V**

26 151. Petitioner Mr. Zheng re-alleges and incorporates herein by reference, as is set forth
27 fully herein, the allegations in all the preceding paragraphs.
28

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

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

8 154. Since 2015, Mr. Zheng has fully complied with the terms of his supervised release
9 imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-
10 arresting him now would be punitive and violate his constitutional right to be free from the
11 unjustified deprivation of his liberty.

12 155. For these reasons, Mr. Zheng's re-arrest without first being provided a hearing
13 would violate the Constitution.

14 156. The Court must therefore order that, prior to any re-arrest, the government must
15 provide him with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator
16 would evaluate, *inter alia*, whether his removal is reasonably foreseeable and otherwise whether
17 circumstances have changed such that he now poses a danger or a flight risk. During any custody
18 redetermination hearing that occurs, the neutral adjudicator must consider alternatives to detention
19 when determining whether Petitioner's re-incarceration is warranted.

20 **SIXTH CAUSE OF ACTION**

21 **Procedural Due Process – Unconstitutionally Inadequate Procedures Regarding Third
22 Country Removal**

23 **U.S. Const. amend. V**

24 157. Petitioner Mr. Zheng re-alleges and incorporates herein by reference, as if set forth
25 fully herein, the allegations in all the preceding paragraphs.

26 158. The Due Process Clause of the Fifth Amendment requires sufficient notice and an
27 opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see*
28 *also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243, 1252 (E.D.

1 Cal. 1994) (“[D]ue process requires that government action falling within the clause’s mandate
2 may only be taken where there is notice and an opportunity for hearing.”).

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

6 160. For these reasons, Mr. Zheng’s removal to any third country without adequate
7 notice and an opportunity to apply for relief under the CAT would violate his due process rights.
8 The only remedy of this violation is for this Court to order that he not be summarily removed to
9 any third country unless and until he is provided constitutionally adequate procedures.

10 **PRAYER FOR RELIEF**

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

- 12 (1) Assume jurisdiction over this matter;
- 13 (2) Order that Petitioner’s detention is unlawful in violation of *Zadvydas* because
14 his removal is not reasonably foreseeable;
- 15 (3) Order that Petitioner’s detention is unlawful in violation of 8 C.F.R. §
16 241.13(i)(2) because there are no changed circumstances showing that there is
17 a significant likelihood that he may be removed in the reasonably foreseeable
18 future;
- 19 (4) Order the immediate release of Petitioner because ICE did not follow its own
20 regulations in re-detaining him;
- 21 (5) Order the immediate release of Petitioner from custody because his detention is
22 not reasonably foreseeable in violation of *Zadvydas*;
- 23 (6) Order the immediate release of Petitioner from custody because his detention is
24 unlawful in violation of 8 C.F.R. § 241.13(i)(2);
- 25 (7) Order that Petitioner’s detention is unlawful because ICE did not follow its own
26 regulations in re-detaining him and therefore his detention is unlawful;
- 27 (8) Order the immediate release of Petitioner from custody on any other basis that
28 this Court finds proper;

1 (9) Order that, prior to any future re-detention, Petitioner is provided a hearing
2 before a neutral adjudicator to determine whether his re-detention would be
3 lawful because the government has shown that his removal is reasonably
4 foreseeable and otherwise whether circumstances have changed such that he is
5 now a danger or a flight risk, and that the neutral adjudicator must further
6 consider whether, in lieu of detention, alternatives to detention exist to mitigate
7 any risk that DHS may establish;

8 (10) Order that Petitioner cannot be removed to any third country without first
9 being provided constitutionally-compliant procedures, including:

- 10 a. Written notice to Petitioner and counsel of the third country to which he
11 may be removed, in a language that Petitioner can understand, provided
12 at least 21 days before any such removal;
- 13 b. A meaningful opportunity for Petitioner to raise a fear of return for
14 eligibility for protection under the Convention Against Torture,
15 including a reasonable fear interview before a DHS officer;
- 16 c. If Petitioner demonstrates a reasonable fear during the interview, DHS
17 must move to reopen his underlying removal proceedings so that he may
18 apply for relief under the Convention Against Torture;
- 19 d. If it is found that Petitioner does not demonstrate a reasonable fear
20 during the interview, a meaningful opportunity, and a minimum of 15
21 days, for Petitioner to seek to move to reopen his underlying removal
22 proceedings to challenge potential third-country removal;

23 (11) Award Petitioner reasonable costs and attorney fees; and

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

25 Dated: December 1, 2025

26 Respectfully submitted,

27 s/ Zachary Nightingale
28 Zachary Nightingale
Christine Raymond
Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this December 1, 2025, in San Francisco, California.

s/ Zachary Nightingale
Zachary Nightingale
Attorney for Petitioner

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