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Kai Lun ZHENG (aka Wai Keung Cheung)

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Kai Lun ZHENG,

Petitioner-Plaintiff,

v.

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

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

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

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

Tonya ANDREWS, Facility Administrator at Golden State Annex Detention Center, McFarland, California

Respondents-Defendants.

Case No. 1:25-cv-01685-DJC-CKD

**PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

Judge: Hon. Daniel J. Calabretta
Hearing Date: December 15, 2025
Hearing Time: 11:00am

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## I. INTRODUCTION[1]

Petitioner Kai Lun Zheng ("Mr. Zheng") was unlawfully detained by Respondents on October 15, 2025, and his unjustified civil detention will continue to be unlawfully indefinite, without any meaningful recourse, absent intervention by this Court. In fact, given the lack of any evidence or compelling argument by Respondents in their opposition, it appears more likely he will be removed to a third country—without notice—than to be actually removed to China, the only country to which he has a removal order.

In the nearly two months that Mr. Zheng has been unlawfully detained in the custody of U.S. Immigration and Customs Enforcement ("ICE"), Respondents have failed to do more than merely *prepare* the travel document request that is currently pending *internal* review by ICE itself, and has yet to even be submitted to China. Dkt. 10, Respondent's Opposition ("Opp."); Dkt. 10-1, Declaration of Deportation Officer Refugia Guerra (|Guerra Decl."). In fact, this request was not even drafted until December 4—three days *after* Mr. Zheng filed his petition for writ of habeas corpus ("Petition") and ex parte motions for temporary restraining order ("TRO") and preliminary injunction ("PI"), and six weeks after his detention. *Id.*

Respondents also acknowledge that Mr. Zheng has been through the cycle of detention twice before: he was detained in, and then released from, immigration custody on two separate occasions—in September 2014 and again in August 2015—pending the issuance of travel documentation from China, which never occurred. *Id.* In other words, for *at least eleven years now*, Respondents have made multiple and ongoing efforts to obtain a travel document for Mr. Zheng from China and yet have failed to obtain one. Ironically, those efforts have not continued with any alacrity now that his liberty is restricted and he is detained at government expense. Aware of China's unwillingness to issue him a travel document, and hoping to avoid being unlawfully and indefinitely detained, Mr. Zheng specifically requested to ICE officers during his re-detention on October 15, 2025, that "if ICE cannot get the travel documents[,] please do not

[1] Respondents, as part of their Opposition, make a motion to strike and dismiss several of the named Respondents. Dkt. 10 at 1, n.1. The Court should reject this, as Respondents have not filed a properly-noticed motion, and raising such a motion as part of an opposition brief is improper. Fed. R. Civ. Pro. 12(f)(2).

hold me indefinitely." Dkt. 1-1. As discussed in his habeas petition and motion for TRO and PI, Chinese consular officials have specifically informed Mr. Zheng that they could not issue him a travel document or passport because they cannot confirm his identity as a Chinese citizen or national. Dkts. 1, 1-1, 2.

Respondents further fail to even address or provide any evidence *specific* to whether China will issue a travel document for Mr. Zheng. Despite Respondents' multiple unsuccessful efforts over the years, and the overwhelming evidence to the contrary, Respondents still allege that there were changed circumstances permitting Mr. Zheng's revocation of release, and that his removal is suddenly reasonably foreseeable. This only underscores that Respondents unconstitutionally deprived Mr. Zheng of his due process rights and illegally detained him based on false statements that circumstances had changed in his case, and on the mere speculation that a travel document will be issued. Now, Respondents have unlawfully detained Mr. Zheng for nearly two months and will continue to do so absent this Court's intervention. Thus, this Court should order Mr. Zheng's immediate release and enjoin Respondents from unlawfully re-detaining him without a pre-deprivation hearing before a neutral adjudicator where Respondents must establish, by clear and convincing evidence, that there is a significant likelihood of his removal in the reasonably foreseeable future (e.g., that China has issued a travel document specifically to Mr. Zheng).

Moreover, the government continually tries to have it both ways with regard to its ability to remove detainees to third countries—they claim it is not happening (i.e., speculative), and also that when it does, there is no need to provide notice. Thus, neither Mr. Zheng nor this Court can know whether the government will try an end-run around the lack of ability to remove Mr. Zheng to China by trying to remove him without notice or an opportunity to apply for fear-based relief to an undisclosed third country. Such third-country removal without notice is not only practically possible, but is expressly *permitted* under the government's own current policy. Dkt. 1-1 at Exhs. D, E. Moreover, it is already documented that such third country removals are *not* speculative, as they are actively occurring.[2] Given the practical and legal impossibility for Mr. Zheng to learn

[2] *See infra* Section II.D.2.

ahead of time that he is going to be removed to a third country, the Court should thus order that such removal be enjoined unless and until he is provided with constitutionally-compliant procedures, because there is no existing system to provide him with either adequate notice of such removal, or the opportunity for him to request the legally required protection from torture or death that he might face in such third countries.

## II. ARGUMENT: MR. ZHENG MEETS THE STANDING TO WARRANT A PI.

Mr. Zheng has established his entitlement to a preliminary injunction by clearly demonstrating: (1) a likelihood of success on the merits; (2) that it is likely he will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Where the government is a party, the last two *Winter* factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Moreover, at a minimum, Mr. Zheng establishes the alternative standard—that he raises "serious questions" as to the merits of his claims, the balance of hardships tip "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

### A. Mr. Zheng Has Established a Likelihood of Success on the Merits of his Claim that his Re-detention is Unconstitutional Because it is Indefinite, as his Removal is not Reasonably Foreseeable.

Contrary to Respondents' claim, Mr. Zheng's re-detention is unconstitutional because it is indefinite, and Respondents have not provided any specific evidence regarding the reasonable foreseeability of Mr. Zheng's removal.

Under clear Supreme Court precedent, which Respondents recognize, post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court has determined to be presumptively six months. *Zadvydas v. Davis*, 533 U.S. 678, 699-701 (2001). The six-month period does not reset or restart if the government decides to re-detain a noncitizen. *Sied v. Nielsen*, No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (citing cases); *Chen v. Holder*, No. CV 6:14-2530, 2015 WL 13236635, at *2 (W.D.

La. Nov. 20, 2015); *Villanueva v. Tate*, No. H-25-3364, 2025 WL 2774610, at *9 (S.D. Tex. Sep. 26, 2025). To find otherwise would lead to an absurd result: the government could detain individuals for a period of 90 days to 180 days upon the assertion that removal is reasonably foreseeable, release them for one day, then re-detain them the following day in order to restart the clock. This merry-go-round model of detention and release is not contemplated by the controlling statute and regulations, nor is it authorized by the Supreme Court's *Zadvydas* decision or principles of due process. *See Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) ("The removal period begins on the date the Order of Removal becomes administrative[ly] final, 8 U.S.C. § 1231(a)(1)(B)(i)...the statute contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero.").

Here, Mr. Zheng was ordered removed in 2010, and following his order of removal, was already previously detained for over seven months in ICE detention, at first in 2014 and then again in 2015. He was released, both times, because ICE was unable to obtain travel documents from China for him and "elected to release" him on OSUPs "pending travel documentation from [China]." *See* Guerra Decl. Thus, Mr. Zheng's post-final order detention clock began to run in 2010, and he has already been detained for *more than* the presumptive six months in post-removal detention. 8 C.F.R. § 241.4(g)(1)(i). More than ten years have passed since he was last released from ICE custody, and during this entire time, still no travel document has become available.

Mr. Zheng has also made attempts, of his own accord, to obtain travel documents from China, but China has rejected his requests. In fact, consulate officials informed Mr. Zheng that he was not found on the consular records and that, absent a copy of his passport and/or birth certificate, both of which Mr. Zheng does not possess, the consulate could not issue him a passport or any travel document. Dkts. 1, 1-1, 2.

Further, Mr. Zheng has already explained that the Chinese government has historically *not* accepted deportees from the United States. Dkts. 1, 1-1, 2. China has been classified by ICE itself as a recalcitrant country in that it "systematically refuse[s] or delay[s] the repatriation of

[its] citizens."[3] Respondents are well aware of this, as Congress has communicated to both the Secretaries of the U.S. Department of Homeland Security ("DHS") and the U.S. Department of State ("DOS") that "China is one of 13 countries considered uncooperative or 'recalcitrant,' systematically refusing or needlessly delaying the repatriation of their citizens." Dkts. 1, 1-1, 2. The letter adds that Beijing has been slow, or has outright refused to accept, repatriation of its citizens. *Id.*

Thus, Mr. Zheng's detention continues to be unconstitutionally indefinite because he demonstrates that his removal to China is not reasonably foreseeable, and Respondents have not provided any evidence to show otherwise.

**B. Mr. Zheng is Likely to Succeed on his Claims that ICE Violated its Own Regulations in Re-detaining him by Falsely Stating that There Were Changed Circumstances and that his Removal was Reasonably Foreseeable When in Fact No New Request for Travel Documents Had Even Been Submitted to China.**

While Respondents purport that ICE's regulatory authority permitted the agency to re-detain Mr. Zheng, they are incorrect in asserting that Respondents followed their own regulations in re-detaining him because it is clear that there are no changed circumstances regarding the reasonably foreseeability of his removal. 8 C.F.R. § 241.13(i)(2).

In support of their assertion, Respondents merely provide a conclusory statement that ICE has recently been able to obtain travel documents for Chinese individuals and remove them, and that China is fulfilling travel documents in "forty-five to sixty days, but sometimes in a shorter period[,]" Guerra Decl. This mere statement is unpersuasive and insufficient to support that there is a significant likelihood that Mr. Zheng may be removed in the reasonably foreseeable future. At the outset, it should be noted that Respondents misconstrue the standard needed to revoke release based on changed circumstances. In its opposition, Respondents allege that Mr. Zheng's revocation was issued because ICE determined that Mr. Zheng's "removal was likely to occur in the reasonably foreseeable future." Dkts. 10, 10-1. However, the requisite standard is a "significant

[3] *See* Congressional Research Service, "Immigration: 'Recalcitrant' Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals" (July 10, 2020), available at: https://www.congress.gov/crs-product/IF11025.

likelihood" of removal in the reasonably foreseeable future. 8 C.F.R. §§ 241.13(i), 241.4. A "significant likelihood" requires something *more* than a mere possibility that removal will occur. *Yan-Ling X. v. Lyons*, No. 1:25-cv-01412-KES-CDB (HC), 2025 WL 3123793, at *4 (E.D. Cal. Nov. 7, 2025). Such evidence includes statistics, including the total number of requests submitted and the total number of requests approved by China, in addition to the total number of removals actually effectuated. *See Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass. June 20, 2025); *Phan v. Becerra*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16, 2025); *see also Trinh v. Homan*, 466 F.Supp.3d 1077 (9th Cir. 2020) (noting that Vietnam's issuance of travel documents to pre-1995 arrivals in only 7% of cases does not support a significant likelihood of removal). For example, courts have held that a single occasion where a country has issued a travel document and effectuated removal for another individual is "hardly persuasive" to demonstrate changed circumstances. *Phan,* 2025 WL 1993735, at *4; *see also Wing Nuen Liu*, 2025 WL 1696526, at *2 (finding that "a single example of documentation being received in March from the Chinese Embassy for one Chinese alien is hardly persuasive" to demonstrate changed circumstances); *see also Yang v. Kaiser,* No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778 (E.D.Cal. Aug. 20, 2025).

Thus, Respondents' conclusory assertion that ICE has been able to obtain travel documents for other Chinese nationals and remove them to China is unpersuasive and insufficient to support that there is a "significant likelihood" that Respondents will be able to obtain a travel document for Mr. Zheng. In addition, Respondents fail to provide individualized and specific evidence that unlike in the prior unsuccessful attempts, this time, China will accept Mr. Zheng, and that it will do so in the reasonably foreseeable future. There is nothing to indicate why a different result is significantly likely to occur this time.

Moreover, no travel document can possibly be issued if no request is actually made. So the lack of significant likelihood is particularly obvious given that, as Respondents acknowledge, Mr. Zheng's request is still pending final approval from within ICE itself, and has yet to be submitted

to China. Guerra Decl. In fact, the Guerra Declaration actually serves to undermine Respondents' assertion that Mr. Zheng's removal is reasonably foreseeable and thus constituted a valid reason to detain him. *See id.* The declaration describes how Respondents began processing his travel document requests *on December* 4—three days *after* Mr. Zheng filed his Petition and TRO/PI, and *more than six weeks since* he was re-detained. Further, the declaration notes that in the past eleven years, ICE's efforts to obtain a travel document for Mr. Zheng have remained ongoing, yet unsuccessful. *Id.*

While it appears that Mr. Zheng received written notice, Dkt. 10-1, Exh. 10, he could not have actually responded to the reason for revocation of release because the stated reason—that there were changed circumstances in his case, as his case was "currently under review by the Government of China for the issuance of a travel documents and [his] removal is now imminent"—was false, as China had not, and presumably still has not, even received a travel document request from ICE. *Id.* Federal agencies are "obliged to abide by the regulations [they] promulgate[]." *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998). Here, ICE has failed to do so.

In sum, there are no changed circumstances regarding the reasonable foreseeability of Mr. Zheng's removal, and the written notice of revocation falsely stated that circumstances had changed because the travel document was pending with China at the time of revocation—yet Respondents acknowledge that the travel document is still currently pending internal processing with ICE. Dkt. 10-1. Thus, ICE re-detained Mr. Zheng in violation of the controlling regulations .8 C.F.R. § 241.13(i).

**C. Due Process Requires that Mr. Zheng be Provided with a Pre-Deprivation Hearing Prior to Re-Detention.**

As an individual in this country, Mr. Zheng has due process rights, including a protected liberty interest in his supervised release. This interest is not diminished by virtue of the supervised nature of his release. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs). Respondents cite to *Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011) for the proposition that individuals in Mr. Zheng's position have a lesser liberty interest. However,

Respondents fail to note that this decision was abrogated by *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201-02 (9th Cir. 2022). Respondents' reliance on *Mathews v. Diaz*, 426 U.S. 67 (1976) is likewise misplaced, as there the Supreme Court discussed the eligibility of certain noncitizens for Medicare benefits—*not*, as here, a noncitizen's right to be provided with procedures that comport with due process prior to any re-detention.[4]

Here, ICE's regulatory authority to unilaterally re-detain Mr. Zheng is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Zheng's case, due process required, and requires in the future, notice and a hearing *prior to any re-detention* at which he is afforded the opportunity to advance his arguments as to why he should not be re-detained. This relief sought is not speculative, as Respondents submit. Mr. Zheng has *already* been re-detained in violation of his due process rights and, when and if Mr. Zheng is released from unlawful detention, he will be placed back on his OSUP, which requires him to attend in-person check-ins with ICE on a regular basis. Respondents, in fact, have provided this Court with a copy of his most recent OSUP and acknowledged that Mr. Zheng has attended such regular, in-person check-ins with ICE. Dkt. 10-1. If this Court does not order this preliminary relief sought—a pre-deprivation hearing prior to any re-detention—ICE could simply unlawfully re-detain Mr. Zheng at any of his future, in-person check-ins—*as they already did on October 15, 2025*. Thus, this scenario is not speculative both because it has already happened, and also because ICE would have ample opportunity to re-detain Mr. Zheng at any of his future scheduled check-ins.

[4] Contrary to Respondents' position, Mr. Zheng's reliance on *Morrisey v. Brewer*, 408 U.S. 471 (1972) is not misplaced, as it addresses the due process protections afforded to former criminal detainees released on parole, which is a form of supervised release. Mr. Zheng is not a criminal detainee, but a civil detainee, and thus the due process considerations of his liberty are even weightier than the courts have already found apply in the criminal context.

Moreover, Respondents citation to *Quoc Chi Hoac v. Becerra*, 2:25-cv-1740 DC, ECF No. 21, p.5 (June 30, 2025) is equally misplaced. The Court ultimately granted the motion for TRO in that case and ordered that "Respondents are ENJOINED AND RESTRAINED from re-detaining or removing Petitioner to a third country without notice and an opportunity to be heard." *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.Cal. July 16, 2025). This case was litigated by undersigned counsel.

Under the process that Respondents maintains is lawful—which affords Mr. Zheng no meaningful process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Zheng will be erroneously deprived of his liberty is very high if ICE is permitted to re-detain him after making a unilateral decision to re-arrest him. Thus, the regulations are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-detain individuals, even based on a mere statement by the government (and nothing more) that "there is a significant likelihood of removal in the reasonably foreseeable future." Opp. at 7-8. After re-arrest, ICE again makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f). The inadequacy of the existing procedures is demonstrated, first and foremost, by the fact that Mr. Zheng has *already* been unlawfully detained for two months without meaningful process. While Respondents cite to 8 C.F.R. § 241.13(i)(3) to explain that this regulation provides Mr. Zheng with the opportunity to "submit evidence or information that he…believes shows there is no significant likelihood he…be removed in the reasonably foreseeable future," Respondents fail to note that Mr. Zheng could not have provided any evidence because there was no changed circumstance, as his travel request was not even pending at the time of his re-arrest. In addition, as discussed above, Mr. Zheng did request that he not be held indefinitely if ICE did not have a travel document for him, which ICE ignored. This fact, in turn, further demonstrates the inadequacy of the existing procedures.

Finally, the procedure that Mr. Zheng seeks—release from custody until he is provided a pre-deprivation hearing prior to any re-detention—is a standard course of action for the government. It would not place additional fiscal and administrative hurdles on the government, as Respondents suggest, and it will provide Mr. Zheng with safeguards to ensure that his due process rights are protected. Release from custody until ICE assesses and demonstrates to a neutral adjudicator (such as an Immigration Judge) that Mr. Zheng is actually a flight risk or danger to the community, or that his removal is reasonably foreseeable, is far *less* costly and burdensome for the government than keeping him detained. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir.

2017) ("The costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million.").

Moreover, such a hearing is much more likely to produce accurate determinations regarding the factual dispute of the reasonable foreseeability of his removal, and whether he otherwise poses a danger or flight risk. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Numerous courts have already agreed that, for similarly situated individuals, due process requires a pre-deprivation hearing prior to any re-detention. *L.R.P. v. Wofford*, No. 1:25-cv-01464-KES-SKO (HC), 2025 WL 3190589, at *9-10 (E.D. Cal. Nov. 14, 2025) (habeas granted enjoining and restraining the government from re-detaining the petitioner "unless there are material changed circumstances and a neutral decisionmaker determines that there is a significant likelihood of petitioner's removal in the reasonably foreseeable future...."); *Garcia-Ayala v. Andrews*, No. 2:25-CV-02070-DJC-JDP, 2025 WL 2597508, at *5 (E.D. Cal. Aug. 8, 2025) (TRO prohibiting the petitioner's re-detention without notice and a pre-deprivation hearing before a neutral decisionmaker); *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (same); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025) ("If the government wishes to detain [the petitioner], it need only provide a hearing before a neutral decisionmaker."); *Yang*, 2025 WL 2791778.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or flight risk (in order to effectuate removal). *See Zadvydas*, 533 U.S. at 690. As already briefed in the motion for TRO, Mr. Zheng does not pose a danger or a flight risk, as he has been continuously checking in with ICE pursuant to his OSUP since 2014, and has no further criminal history since that time. Mr. Zheng does not dispute that he has a final removal order to

China, and he has always complied with ICE's requests for him to complete travel document applications. Dkts. 1, 1-1, 2. In fact, he even conducted his own efforts to obtain travel documents from China, but China refused to issue him a travel document. *Id.* Importantly, Mr. Zheng does *not* need to be detained in order for Respondents to effectuate his removal, nor does he need to be detained for the issuance of a travel document.

Thus, Mr. Zheng is likely to succeed in (or at least shows serious questions going to the merits of) his claim that due process requires that he have been provided with a pre-deprivation hearing prior to his re-detention, and that he be provided such a hearing prior to any future re-detention.

**D. This Court has Jurisdiction Over Mr. Zheng's Civil Detention and Third Country Removal Claims, and Neither is Barred by 8 U.S.C. § 1252(g).[5]**

The Court should reject Respondents' assertion that Mr. Zheng's claims are barred by 8 U.S.C. § 1252(g), which is simply not implicated here. Contrary to Respondents' assertions, Mr. Zheng does not challenge his removal order or Respondents' execution of the order. Opp. at 8. Rather, Mr. Zheng's claims challenge his re-detention, which was conducted in violation of Respondents' mandatory duties under certain statutes, regulations, and the Constitution. He also requests an order that he be provided with constitutionally-compliant procedures prior to any third-country removal—a reality that is not speculative.

Respondents err in contending that Mr. Zheng's third country removal claims are barred by 8 U.S.C. § 1252(g). At the outset, the Ninth Circuit has held that jurisdiction over third country

[5] The Supreme Court has held that the scope of section 1252(g) is "narrow," and rejected as "implausible" Respondents' assertion that section 1252 deprives jurisdiction over any claim or cause of action arising from any decision related to deportation proceedings. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (quoting 8 U.S.C. § 1252(g)). Courts have held they have jurisdiction to consider due process claims brought by a petitioner with a final order of removal contesting the government's detention in violation of mandatory duties under certain statutes, regulations, and the Constitution. *Duong v. Charles*, No. 1:25-CV-01375-SKO, 2025 WL 3187313, at *2 (E.D. Cal. Nov. 14, 2025). Habeas relief, the Court has held, is at its "core" a remedy for release from unlawful executive detention, not the right to remain in a country. *Rauda v. Jennings*, 55 F.4th 773, 779 (9th Cir. 2022) (citing *DHS v. Thuraissigiam*, 140 S. Ct. 1959, 1975 (2020)). Here, Mr. Zheng requests an order directing Respondents to immediately release him from his unlawful civil detention, which Respondents carried forth in violation of their own regulations and of his due process rights. In addition, he requests an order enjoining Respondents from re-detaining him without first providing him with constitutionally-compliant procedures. Mr. Zheng's requests are at the "core" of habeas relief. Thus, this action falls outside of the narrow scope of section 1252(g) and is within the Court's jurisdiction.

removal claims are not foreclosed by section 1252(g). *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). In addition, this Court has jurisdiction because Respondents cannot be insulated from judicial review over "any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death." *Id.* Mr. Zheng does not seek to enjoin his removal outright—rather he only seeks an order that he be provided with constitutionally-compliant procedures prior to any such third country removal. Thus, this Court has jurisdiction over Mr. Zheng's third country removal claims.

In addition, Mr. Zheng's fear that he may be removed, without notice or process, to a third country apart from China is not speculative (despite ICE's *current* indication that they do not seek to remove him to a third country [Dkt. 8]). In fact, third country removals—*without notice*—are the current policy of the DHS. Mr. Zheng has already provided this Court with a copy of this policy, along with an internal ICE memorandum, dated July 9, 2025, which further confirms that officers are instructed to follow the March 30, 2025, memorandum. Dkt. 1-1, at Exhs. D, E.

Not only does this DHS policy exist, but the government is actively following this policy and has removed other detainees with either no, or virtually no, notice. Individuals have found themselves unlawfully deported to third countries such as El Salvador, Panama South Sudan, or Eswatini—a reality that is surely not speculative. [6] Some individuals have been sent to third countries where they have already faced torture, while others, their attorneys have been unable to confirm that they are even alive.[7] Even if Respondents have not indicated that they seek to

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[6] NPR, "U.S. deports hundreds of Venezuelans to El Salvador, despite court order" (Mar. 16, 2025), available at: https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump; AP, "Panama releases dozens of detained deportees from US into limbo following human rights criticism" (Mar. 9, 2025), available at: https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5; Politico, "Trump launches next round of third country deportations with new flight to Eswatini" (July 16, 2025), available at: https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757 ("The Trump administration deported five migrants from Vietnam, Jamaica, Laos, Cuba and Yemen to the small Southern African nation of Eswatini on Tuesday…."); Associated Press, "Men deported by US to Eswatini in Africa will be held in solitary confinement for undetermined time" (July 18, 2025), available at: https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8; The Intercept, "State Dept: Trump's 'Third Countries' for Immigrants Have Awful Human Rights Records" (July 29, 2025), available at: https://theintercept.com/2025/07/29/trump-deport-immigrants-third-country-human-rights/.

[7] The Guardian, "Venezuelans deported by Trump are victims of 'torture', lawyers allege" (May 16, 2025), available at: https://www.theguardian.com/us-news/2025/may/16/venezuelans-deported-trump-lawyers-torture ("Lawyers

specifically remove Mr. Zheng to a third country at this time, that they are actively following their policy of third country removal is explicit and real. Thus, Mr. Lam's fear of being removed to a third country without due process is a real and immediate threat of future injury jeopardizing his life and safety, and depriving him of any constitutional rights.[8]

Further, this policy is not limited to situations where removal to the country named in the removal order itself is not possible, as illustrated, for example, by the reports that a citizen of Mexico was sent to South Sudan.[9] Respondents are engaged in a policy of effectuating removal however they determine they want to do so, and are proudly broadcasting to the world their ability to do so. DHS itself has publicly announced that it has the "undisputed authority to deport criminal illegal aliens–who are not wanted in their home country–to third countries that have agreed to accept them."[10] Such third country removal could be arranged by Respondents at any time, with no notice required—so the lack of a plan today indicates nothing about the possibility for an active removal tomorrow.[11]

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hired by Venezuela have been unable to confirm 'proof of life' for 252 migrants imprisoned in El Salvador."); NPR, "Abrego Garcia says he was severely beaten in Salvadoran prison" (July 3, 2025), available at: https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture.

[8] It gets worse. Human Rights experts from the United Nations have already expressed that the government's own explicit policy is not compliant with the United States's obligations under international law. *See* United Nations, "UN experts alarmed by resumption of US deportations to third countries, warn authorities to assess risks of torture" (July 8, 2025), available at: https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn.

[9] The Guardian, "US border czar says he doesn't know fate of eight men deported to South Sudan" (July 11, 2025), available at: https://www.theguardian.com/us-news/2025/jul/11/trump-immigration-tom-homan-south-sudan-deportees.

[10] DHS, "DHS Releases Statement on Major Victory for Trump Administration and the American People on Deporting Crimin. al Illegal Aliens to Third Countries" (June 23, 2025), available at: https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people; CBS News, "Supreme Court lets Trump administration resume deportations to third countries without notice for now" (June 24, 2025), available at: https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-tothird-countries-without-notice/.

[11] Numerous courts have already determined that due process challenges to the third-country removal policy are likely to succeed on the merits because the policy exists and is being executed, resulting in the deportation of noncitizens to third countries with little or no notice in violation of the Due Process Clause. *Vu*, 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025). That is because the policy is carried out absent proper notice, through last-minute orders of removal, and through the failure to notify individuals of their due process rights and rights under the Convention Against Torture. *Id.; see e.g., Nguyen v. Scott*, 2025 WL 2419288, at *18-23; *Zakzouk v. Becerra*, No. 25-CV-06254-KAW, 2025 WL 2899220, at *4 (N.D. Cal. Oct. 10, 2025); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 2987766, at *2-3 (W.D. Wash. Oct. 23, 2025). Accordingly, the existence of the policy and the unconstitutional manner in which it is carried out support that Mr. Zheng's concerns are not speculative, but rather a real threatened injury, and the Court therefore has jurisdiction over this claim.

Finally, to vitiate a third-country removal claim, it is not sufficient for Respondents to merely note that there is no plan to remove Mr. Zheng to a third country. *Vu*, 2025 WL 3114341, at *8 (where ICE has offered "no argument in response" to the petitioner's third-country argument and ICE "do[es] not state whether they are attempting or will attempt to remove petitioner to a country other than Vietnam . . . . [t]hat silence is telling."). Here, Respondents offer no indication that they will *not* remove Mr. Zheng to a third country. Opp. at 8. They merely argue that ICE is not currently seeking to remove Mr. Zheng to a third-country. *Id.* This is insufficient to guarantee the absence of a threat of injury, particularly as the policy is conducted absent notice and due process.

For all the above reasons, Mr. Zheng's fear of being summarily removed to a third country—without first being provided with notice or any constitutionally-compliant procedures—is not "speculative," but is grounded in the reality that many other detainees are already experiencing, and is unconstitutional. Therefore, immediate intervention by this Court is necessary to protect Mr. Zheng's due process rights.

**E. Mr. Zheng Clearly Establishes a Likelihood of Immediate Irreparable Harm, and That the Balance of Harms and Public Interest Weigh in Favor of Relief.**

Given that Mr. Zheng is likely to succeed on the merits of his claims, and that his claims are constitutional in nature, he has sufficiently demonstrated that he will suffer harm absent immediate injunctive relief. The factors under the balancing test established in *Mathews v. Eldridge* weigh heavily in his favor. 424 U.S. 319, 335 (1976). Respondents do not contest the well-settled principle that a violation of constitutional rights constitutes irreparable injury. *Hernandez*, 872 F.3d at 995-96 ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (quoting *Melendres v. Apraio*, 695 F.3d 990, 1002 (9th Cir. 2012)); *see* Opp. at 9 (citing *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984)).

Mr. Zheng further demonstrates that the balance of harms and public interest weigh in favor of relief. If a PI is not entered, Respondents would effectively be granted permission to

detain him arbitrarily, whenever and for however long they wish, in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.")

Mr. Zheng has amply demonstrated that he faces irreparable harm and that the balance of equities tips in his favor. Respondents do not challenge his argument that the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). Respondents have all of the power to locate, arrest, and detain a non-citizen such as Mr. Zheng if and when such detention is legally permissible. Respondents will thus not be injured by an order requiring them to release him from custody, and prohibiting them from re-detaining them unless he is provided with a due process hearing where the parties can fully litigate the legality of his re-detention. Such a hearing is constitutionally mandated, and the government is not injured by being held to the Constitution. *Zepeda*, 753 F.2d at 727. As such, the balance of equities and public interest weigh heavily in favor of granting Mr. Zheng injunctive relief.

## III. CONCLUSION

For all the aforementioned reasons, the Court should grant Mr. Zheng's motion for a preliminary injunction.

Dated: December 12, 2025

Respectfully submitted,

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