THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ZIYAN YAO; B.W., Petitioners, v. JOSE RODRIGUEZ, JR., ADMINISTRATOR, DILLEY IMMIGRATION PROCESSING CENTER; KRISTI NOEM, SECRETARY, DEPARTMENT OF HOMELAND SECURITY; PAM BONDI, ATTORNEY GENERAL; TODD LYONS, ACTING DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT; SYLVESTER M. ORTEGA, ACTING FIELD DIRECTOR, SAN ANTONIO FIELD OFFICE, ENFORCEMENT AND REMOVAL OPERATIONS, IMMIGRATION AND CUSTOMS ENFORCEMENT; Respondents.	Case No.: 5:25-cv-01855

PETITIONERS' EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules and Regulations

Petitioners hereby make this *Ex Parte* Motion for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction. Petitioners are citizens of China who were detained by immigration authorities on December 3, 2025, years after any statutory authorization for detention had expired. Since December 3, 2025, Petitioners have been detained by Respondents, including U.S. Immigration and Customs Enforcement, and they are being held at the Dilley Immigration Processing Center, a federal detention facility at 300 El Rancho Way, Dilley, Texas. When Petitioners' counsel informed Respondents' counsel of their intention to file this motion; counsel indicated that Respondents oppose the relief sought. *See* Ex. 1 (Tyler Decl.).

As explained below, Petitioners' detention by Respondents is unlawful, and Petitioners should be released immediately for the following reasons: (1) Respondents' detention of Petitioners is not authorized by statute; (2) Respondents' detention of Petitioners violated Petitioners' procedural due process rights under the Fifth Amendment to the United States Constitution because Respondents failed to follow their own regulations governing the revocation of an order of supervision, 8 C.F.R. § 241.4, and they interfered with Petitioners' right to counsel; (3) Petitioners present no danger to public safety or flight risk and therefore cannot be held in detention under immigration laws as a matter of substantive due process under the Fifth Amendment to the United States Constitution; and (4) Respondents' detention of Petitioners violates the Administrative Procedure Act because Petitioners' detention was carried out in violation of ICE's governing regulations and the revocation of Petitioner Ziyan Yao's order of supervision was an arbitrary and capricious action.

Petitioners request that the Court (1) issue a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction for immediate release from detention; (2) bar Respondents from detaining Petitioners again without providing a pre-deprivation hearing before a neutral

adjudicator where ICE must establish by clear and convincing evidence that Petitioners are either a flight risk or a threat to public safety; and (3) prevent Petitioners' removal from the United States during the pendency of their underlying habeas petitions.

I. INTRODUCTION

Petitioners Ziyan Yao and B.W. seek a Temporary Restraining Order (TRO) requesting immediate release from detention, on the grounds that their detention violates 8 U.S.C. § 1231, their procedural and substantive due process rights under the Fifth Amendment of the U.S. Constitution, and the Administrative Procedure Act. This request is particularly urgent given that B.W. is a fourteen-year-old child and at serious risk of self-harm without consistent access to her medication and therapist's care.

Ziyan Yao (known to her friends and family as "Grace") is a preschool teacher in Irvine, California. B.W. is a fourteen-year-old, ninth-grade student and Ms. Yao's daughter. They are Chinese citizens who lawfully entered the United States and have resided here for over twelve years without interruption. Ms. Yao is married to a natural-born U.S. citizen, who is also an honorably discharged U.S. Marine Corps veteran. The family is in the process of pursuing lawful permanent resident status for Petitioners based on Ms. Yao's lawful marriage to her husband.

Petitioners were lawfully admitted to the United States in 2013 on a B-2 visitor visa. During their lawful stay, they timely applied for asylum, seeking protection from China's then-operative one-child policy. An immigration judge denied their asylum claim and issued an Order of Removal, which became final in April 2017. The next month, U.S. Immigration and Customs Enforcement (ICE) issued an Order of Supervision (OSUP) to Ms. Yao. Ms. Yao has fully complied with all conditions set forth in the OSUP, including annual ICE check-ins. Neither petitioner has any criminal history, either in the United States or elsewhere.

ICE detained Petitioners on the day of Ms. Yao's routine check-in at the ICE facility in Santa Ana, California on December 3, 2025. In doing so, Respondents acted without any statutory authorization, as Petitioners do not satisfy any of the criteria listed at 8 U.S.C. § 1231(a)(6) for detention of a noncitizen beyond the initial ninety-day removal period. Moreover, Respondents failed to provide Petitioners with any semblance of due process and failed to comply with the revocation and custody-review procedures listed in 8 C.F.R. § 241.4. In particular, Respondents did not serve Petitioners or their counsel with notice of revocation of Ms. Yao's OSUP. They did not provide notice of the reasons for the presumed revocation. Indeed, to this day, no one has explained to Petitioners or their counsel, or provided them with any documents explaining, the reasons why Petitioners were detained. And Respondents have not conducted an interview to provide Petitioners with an opportunity to contest the reasons for their detention.

At the time of this filing and upon information and belief of undersigned counsel, Petitioners are detained at the Dilley Immigration Processing Center, in Dilley, Texas. Conditions in that facility are a threat to B.W.'s life, health, and well-being. B.W. suffers from anxiety and depression, and she has been medically determined to be a suicide risk. In February 2025, she attempted suicide and required in-patient hospitalization for several days. She has been prescribed Lexapro (escitalopram) and regularly meets with a therapist who is familiar with her background and conditions and supervises her recovery. Since being detained, B.W. has had unreliable access to her medications and to therapy, and she has threatened suicide and other forms self-harm on several occasions.

Moreover, as ICE itself has determined for the last eight and a half years, Petitioners' detention is not warranted, as they have strong ties to their community in Orange County, California, and they present no danger to the community. Ms. Yao has fully complied with all

terms of her OSUP, including annual check-ins with ICE. Petitioners have also maintained a stable residence. They have lived in the same house in Irvine, California since 2018. In May 2025, they signed a new four-year lease that does not expire until 2029. Petitioners also have no criminal history in the United States or elsewhere.

For these reasons, the Court should order Petitioners released from detention, bar Respondents from detaining Petitioners again, without providing a pre-deprivation hearing before a neutral adjudicator where ICE must establish by clear and convincing evidence that Petitioners are either a flight risk or a threat to public safety, and prevent their removal from the United States during the pendency of their underlying habeas petitions.

II. STATEMENT OF FACTS

Petitioner Ziyan Yao is a Mandarin Lead Toddler Teacher in Irvine, California. See Ex. 2 (Yao Decl.) at ¶ 1. She is a 50-year-old immigrant from China. *Id.* Petitioner B.W. is Ms. Yao's 14-year-old daughter. *Id.* at ¶ 2. She is a ninth-grade student at Irvine High School. *Id.* She is also an immigrant from China. Despite her Chinese citizenship, B.W. has not resided in China since she was two years old and does not speak Chinese beyond a basic conversational level. *Id.*

Petitioners have resided in the United States without interruption for over twelve years. *Id.* at ¶ 3. They came to the United States in November 2013, when B.W. was two years old. *Id.* They were lawfully admitted on a B-2 visitor visa. *Id.* They timely applied for asylum, seeking protection from China's then-operative one-child policy. *See* Ex. 3 (Xu Decl.) at ¶ 8. Ms. Yao was the primary applicant, and B.W. was a derivative beneficiary. *Id.* An immigration judge denied asylum and ordered removal on July 12, 2016. Petitioners' appeal to the Board of Immigration Appeals was denied on April 17, 2017. *See* Ex. 4 (Order of Supervision for Petitioner Ziyan Yao). On that date, the order of removal became final. On May 18, 2017, ICE issued Ms. Yao an OSUP, which requires Ms. Yao to check in with ICE as requested. *Id.*

In November 27, 2017, Ms. Yao married Lewis M. Richards. Yao Decl. at ¶ 4. Mr. Richards is a natural-born U.S. citizen and an honorably discharged U.S. Marine Corps veteran. *Id.* at ¶ 4. U.S. Citizenship and Immigration Services (USCIS) approved Mr. Richards's petition for Form I-130 (Petition for Alien Relative). *See* Xu Decl. at ¶ 9. That Form recognizes that Ms. Yao's marriage to Mr. Richards is bona fide and allows Mr. Richards to sponsor Ms. Yao and B.W. as qualifying family members for lawful permanent resident status.

The family has subsequently pursued immigration waivers that would allow Petitioners and Mr. Richards to stay together in the United States during the pendency of Petitioners' applications for lawful permanent resident status. In particular, Ms. Yao and B.W. have both applied for and been granted Form I-212, which permits them to reapply for admission to the United States. *See* Xu Decl. at ¶ 10. In approving their application, USCIS found that Petitioners' re-entry into the United States as permanent residents would be in the national interest and that they merit a favorable exercise of discretion. *Id.* Ms. Yao has also applied for a provisional unlawful presence waiver using Form I-601A. See Xu Decl. at ¶ 11. USCIS received her application on July 16, 2024. *Id.* Her application remains pending. *Id.*

Petitioners have no criminal history in the United States or elsewhere. Yao Decl. at ¶ 5. They also have maintained a stable residence. Petitioners and Mr. Richards have lived in the same Irvine, California home since 2018. *Id.* at ¶ 6. In May 2025, they signed a new four-year lease for the house that will not expire until 2029. *Id.* B.W. is an enrolled ninth-grade student at Irvine High School, in Irvine, California. *Id.* at ¶ 2. Ms. Yao has also fully complied with all terms of her OSUP, including annual check-ins with ICE. *Id.* at ¶ 5.

On December 3, 2025, Ms. Yao reported to ICE at the federal building in Santa Ana, California. *Id.* at ¶ 9; Xu Decl. at ¶ 3. ICE officials had requested this check-in during an earlier

check-in on November 12, 2025. Yao Decl. at ¶ 7; Xu Decl. at ¶ 2. Ms. Yao was accompanied by her attorney, Sara Xu. After a short wait, Ms. Yao and Ms. Xu were escorted to a meeting room, where an ICE officer told Ms. Yao she would not be permitted to leave. Ms. Xu asked the officer to explain why Ms. Yao was being detained. The officer replied merely that the government had decided to enforce the order of removal. Yao Decl. at ¶ 9; Xu Decl. at ¶ 3.

During the same conversation, Ms. Xu attempted to explain to Ms. Yao what the ICE officer was saying to her. Because Ms. Yao is not fluent in English, Ms. Xu spoke to her in Mandarin Chinese—her native language. The ICE officer said that if Ms. Xu did not immediately stop speaking in Chinese to Ms. Yao, she would no longer be allowed to consult with her client. Shortly thereafter, Ms. Xu said something to Ms. Yao in Mandarin, and the ICE officer refused to allow Ms. Yao to continue to communicate with her attorney. Yao Decl. at ¶ 10; Xu. Decl. at ¶ 5.

While still in the same meeting room, Ms. Yao asked the ICE officer what would happen to her daughter, B.W., if Ms. Yao were detained. The ICE officer responded that Ms. Yao had three options. She could either (1) leave B.W. in the care of her husband in the United States; (2) ask B.W. to report to the federal building in Santa Ana, California to be detained with her; or (3) ask B.W. to report to the federal building to be detained in a separate ICE detention center for unaccompanied minors. Yao Decl. at ¶ 11; Xu Decl. at ¶ 6. B.W. is at risk for suicide. And Ms. Yao made the judgment that B.W. would be at greater risk for suicide if they were separated than if they were detained together. Yao Decl. at ¶ 12. Accordingly, Ms. Yao called a friend to pick up her daughter and bring her to the federal building in Santa Ana, California. Later that day, B.W. reported to the federal building and was detained by ICE. Yao Decl. at ¶ 12. They remain in ICE custody at the Dilley Immigration Processing Center, in Dilley, Texas.

At no point during the encounter described above did any ICE official conduct an interview with Ms. Yao, nor did any official explain the reasons for detaining her and B.W., nor did any official provide Ms. Yao or B.W. with documents explaining the reasons for their detention. To this day, no one has explained, or provided any documents explaining, the reasons for ICE's decision to detain Ms. Yao and B.W. Yao Decl. at ¶ 13; Xu Decl. at ¶ 4.

Continued detention poses a serious threat to B.W.'s life, health, and well-being. She is currently experiencing serious and ongoing mental health crises, which place her at elevated risk of self-harm and require continuous medical supervision. B.W. has a history of clinical depression, difficulty coping, and suicide risk, including a documented suicide attempt requiring inpatient hospitalization in February 2025. B.W. has been prescribed Lexapro (escitalopram) for treatment of her depression and generalized anxiety disorder. Yao Decl. ¶ 12. Since her recent suicide attempt, B.W. has also been under the care of a clinical therapist, whom B.W. sees weekly. Since being detained she has missed numerous appointments with her therapist. *Id.* at ¶ 15. She has also made several threats of suicide and self-harm. *Id.* at ¶ 16.

III. ARGUMENT

The requirements for granting a TRO are identical to those for granting a preliminary injunction. *See Canal Authority of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); *Greer's Ranch Café v. Guzman*, 540 F. Supp. 3d 638, 644 (N.D. Tex. 2021). Petitioners are therefore entitled to a TRO upon a showing that (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat'l Resources Def. Council*, 555 U.S. 7, 22 (2008); *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009). When the party opposing injunctive relief is a government entity, the third and fourth factors combine. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

A. Petitioners are Likely to Succeed on the Merits of Their Claims

Petitioners are likely to succeed on their *habeas* claims that they have brought under 8 U.S.C. § 1231, the Due Process Clause of the Fifth Amendment to the U.S. Constitution, and the Administrative Procedure Act. Each of these claims entitles Petitioners to release from detention. Petitioners need not establish that they are likely to succeed on all their claims. A showing that Petitioners are likely to succeed on even one claim is sufficient for injunctive relief as long as they meet the other three factors. *See Arnold v. Barbers Hill Indep. Sch. Dist.*, 479 F. Supp. 3d 511, 519 (S.D. Tex. 2020); *Doe v. Alame*, No. 3:25-CV-0329-B, 2025 WL 713120, at *2 (N.D. Tex. Feb. 24, 2025).

1. Petitioners are Likely to Succeed on Claim One: Violation of 8 U.S.C. § 1231

8 U.S.C. § 1231 provides the statutory basis for the detention of noncitizens. It provides that "when [a noncitizen] is ordered removed, the Attorney General shall remove the [noncitizen] from the United States within a period of 90 days." *Id.* § 1231(a)(1)(A). The statute refers to this as the "removal period." *Id.* For Petitioners, the removal period began on April 17, 2017, which is the day that their order of removal became final. *Id.* § 1231(a)(1)(B). Petitioners were not removed from the United States during the removal period.

When a noncitizen is not removed during the removal period, the noncitizen must be released "subject to supervision under regulations prescribed by the Attorney General." *Id.* § 1231(a)(3). On May 18, 2017, ICE issued Ms. Yao an OSUP, which allows her to live freely in the community subject to conditions that ICE sets. At all times, Ms. Yao has complied with the conditions of her OSUP.

8 U.S.C. § 1231(a)(6) provides the sole statutory basis for detaining noncitizens beyond the removal period. It permits continued detention of noncitizens who satisfy one of the following

criteria: (1) they are inadmissible under 8 U.S.C. § 1182; (2) they are removable under 8 U.S.C. §§ 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4); or (3) they have been "determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

Petitioners do not satisfy any of these criteria. They are not inadmissible under 8 U.S.C. § 1182. In particular, they have no criminal history and did not enter the country unlawfully. They are not removable under 8 U.S.C. § 1227(a)(1)(C) because they have not violated a nonimmigrant status or condition of entry. And they are not removable under 8 U.S.C. § 1227(a)(2) or § 1227(a)(4) because they have no criminal history.

Finally, the Attorney General has not determined that Petitioners are a risk to the community or unlikely to comply with their order of removal. Nor is there any basis for such a determination. Respondents' detention of Petitioners beyond the removal period is thus entirely unauthorized by statute.

2. Petitioners are Likely to Succeed on Claim Two: Fifth Amendment Procedural Due Process

"Noncitizens, even those subject to a final removal order, have constitutional rights just like everyone else in the United States." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Petitioners have met their burden to show that they are likely to succeed on the merits because they have demonstrated that they were denied due process under the Fifth Amendment. In particular, Respondents' decision to detain Petitioners violated Petitioners' rights to procedural due process because Respondents violated their own regulations governing the revocation of an OSUP.

8 U.S.C. § 1231 governs the detention and removal of noncitizens following a final order of removal. A noncitizen who has been ordered removed but who has not been removed during

the removal period "shall be subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3).

8 C.F.R. § 241.4 is the regulation that governs the detention and release of removable noncitizens in Petitioners' circumstances.[1] That regulation establishes procedures that must be followed if a noncitizen's OSUP is revoked. *See* 8 C.F.R. § 241.4(*l*). Government agencies are required to follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). In this case, Respondents violated the governing regulations, thereby amounting to a denial of Petitioners' due process rights.

a) Petitioners were denied notice of the reasons for revocation.

Pursuant to 8 C.F.R. § 241.4(*l*)(1), a noncitizen released on an OSUP must be provided notice of the reasons for the revocation of the OSUP. The reasons must be given "upon revocation." *Id.* Respondents have made no effort to comply with this requirement. To this day, neither Petitioners nor their counsel has received a Notice of Revocation. Nor have they been given any specific reasons for the revocation of Ms. Yao's OSUP. To be sure, when ICE first detained Ms. Yao, her counsel, Ms. Xu, asked the ICE official for the reasons for the detention. He responded merely that the government had decided to enforce the order of removal. The mere existence of an order of removal, however, does not justify the decision to revoke Ms. Yao's OSUP in the absence

[1] 8 C.F.R. § 241.13 does not appear to govern in this case because it pertains only to noncitizens who have "provided good reason to believe there is no significant likelihood of removal" in the "reasonably foreseeable future." The applicability *vel non* of § 241.13, however, does not affect Petitioners' likelihood of succeeding on the merits, as the requirements for revoking an OSUP under that section are substantially the same as the requirements under § 241.4. *See* 8 C.F.R. § 241.13(i) (requiring notice of the reasons for revocation, an informal interview, and an opportunity for the detainee to respond to the reasons for revocation). In other words, if the government takes the position that 8 C.F.R. § 241.13 governs the revocation of Ms. Yao's OSUP, then Petitioners' argument is that Respondents' failure to follow the requirements set forth at § 241.13(i)(3) violated Petitioners' right to due process and violated the *Accardi* principle.

of a finding that Petitioners are a flight risk or a threat to public safety. And Petitioners are still unaware of any factual allegations that led Respondents to detain them.

b) Petitioners were denied an opportunity to respond to the reasons for the revocation.

Under the governing regulation, an "initial informal interview" is also required upon detention. 8 C.F.R. § 241.4(*l*)(1). The purpose of the informal interview is "to afford [the noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* Respondents have not provided Petitioners with the required interview. And, as explained above, they have never provided Petitioners with notice of the specific reasons for their detention. Petitioners have therefore had no "opportunity to respond to the reasons for revocation stated in the notification," since none has been given to them. 8 C.F.R. § 241.4(*l*)(1).

c) Respondents denied Petitioners access to counsel.

At various points 8 C.F.R. § 241.4 contemplates the mandatory involvement of a noncitizen's "representative." *See also id.* § 241.13 (same re "counsel"). Ms. Yao had counsel during the ICE check-in when she was ultimately detained. Respondents knew that Ms. Xu was Ms. Yao's counsel and also knew that Ms. Yao does not speak English fluently. Yet they prevented Ms. Xu from communicating to Ms. Yao about her detention. As explained above, an ICE official refused to allow Ms. Xu to communicate with Ms. Yao in Mandarin Chinese, her native language. And he subsequently refused to allow Ms. Xu to communicate with Ms. Yao *at all*, after Ms. Xu uttered something to Ms. Yao in Chinese after the officer's admonition to speak only in English.

* * *

To determine whether civil detention violates Petitioners' due process rights, the Court must apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here, each factor weighs heavily in favor of finding that Respondents have violated Petitioners' constitutional

right to due process.

Under the first *Mathews* factor, the Court considers "the private interest that will be affected by the official action." *Id.* at 335. This factor weighs heavily in Petitioners' favor. Indeed, "[t]he interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). As this Court has explained, noncitizens who have been released pursuant to an OSUP have a "liberty interest [that] is stronger than the usual *Zadvydas* petitioner, who is detained continuously from the time of their final removal order." *Trejo v. Warden of ERO El Paso E. Montana*, __ F. Supp. 3d __, No. EP-25-CV-401-KC, 2025 WL 2992187, at *6 (W.D. Tex. Oct. 24, 2025). Petitioners have lived at liberty in the United States under Ms. Yao's OSUP for over eight and a half years. They are therefore "entitled to additional procedural protections by virtue of the liberty interest [they] obtained through [their] release." *Id.*

Under the second *Mathews* factor, the Court considers "the risk of an erroneous deprivation of [Petitioners'] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. This factor also weighs heavily in Petitioners' favor. As explained above, Respondents provided Petitioners neither notice nor an opportunity to be heard—the core components of adequate process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (identifying notice and an opportunity to be heard as the "minimum" requirements for constitutionally adequate process); *Trejo*, 2025 WL 2992187, at *7 ("The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." (internal quotation marks omitted)). To this day, the government has not notified Petitioners or their counsel of any rationale for Petitioners' detention or provided an opportunity to respond to that alleged rationale.

Those procedural protections, which the agency's own regulations require, could have avoided the erroneous deprivation of Petitioners' liberty here. For example, if the government's rationale for detaining Petitioners was an erroneous belief that they constitute a threat to public safety, Petitioners or their counsel could have explained that Petitioners have no criminal history either in the United States or elsewhere. Or if the government's rationale was an erroneous belief that Petitioners constitute a flight risk, Petitioners or their counsel could have explained that they have lived in the same home since 2018; that Ms. Yao is married to a U.S. citizen who operates a business near their home; that B.W. attends high school near their home; and that Ms. Yao has made regular requested check-ins with ICE since 2017. Because Petitioners were given no semblance of due process, they were unable to bring these facts to Respondents' attention.[2]

Under the third *Mathews* factor, the Court considers "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. The Government's interest here is to ensure that noncitizens are not a threat to the community or a flight risk. *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516, at *6 (W.D. Tex. Nov. 7, 2025). As this Court has explained, however, the decision to release Petitioners pursuant to an OSUP over eight and a half years ago "reflects a determination by the government that [Petitioners are] not a danger to the community or a flight risk." *Id.* (internal quotation omitted). And, as explained above, there is no evidence indicating that Petitioners are either a flight risk or a threat to public safety. As to fiscal

[2] Petitioners' primary contention is that Respondents' failure to follow their own regulations violates the Due Process Clause because those procedures are constitutionally required. In the alternative, Respondents' failure to follow the governing regulations constitutes a due process violation because, for the reasons stated in the main text, it resulted in substantial prejudice to Petitioners. *See Francois v. Garland*, 120 F.4th 459, 465 (5th Cir. 2024) (noting that violation of a regulation not required by the Constitution or a statute constitutes a denial of procedural due process if the claimant shows "substantial prejudice" arising from the violation).

and administrative burdens, it is difficult to see how the government could plausibly contend that following *their own* regulations would be so burdensome as to outweigh the considerations discussed under the first two *Mathews* factors.

For these reasons, courts in this District have held that Respondents' failure to follow the revocation process as required by 8 C.F.R. § 241.4 constitutes a violation of due process under the Fifth Amendment. *See Trejo*, 2025 WL 2992187, at *7; *Nguyen*, 2025 WL 3120516, at *6.

3. Petitioners are Likely to Succeed on Claim Three: Fifth Amendment Substantive Due Process

The Fifth Amendment's Due Process Clause "protects an alien subject to a final order of deportation." *Zadvydas*, 533 U.S. at 693-94. Immigration detention violates the Due Process Clause if it is not reasonably related to its statutory purpose. *Id.* at 690. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: (1) to mitigate the risk of flight and (2) prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Petitioners present neither a flight risk nor a threat to public safety. Petitioners' detention is therefore not reasonably related to any legitimate purpose and violates the Due Process Clause.

Petitioners were issued an order of removal that became final in April 2017, but for the past eight and a half years ICE has opted not to detain them, let alone effectuate their removal. As explained above, that decision "reflects a determination by the government that [Petitioners are] not a danger to the community or a flight risk." *Nguyen*, 2025 WL 3120516, at *6 (internal quotation omitted). And there is no evidence that Petitioners' situation has changed in any way. Indeed, since they first moved to the United States, Petitioners have led an entirely ordinary suburban life. Ms. Yao and her husband have rented the same Irvine, California home since 2018 and have signed a lease for that home that does not expire until 2029. And B.W. attends a local

high school. Neither petitioner, moreover, has any criminal history. Where, as here, individuals have lived peaceably for years and have complied with all ICE supervision requirements, suddenly detaining them is arbitrary and therefore violates the Due Process Clause. Petitioners have thus demonstrated a likelihood of success on their claim that Respondents violated their substantive due process rights under the Fifth Amendment.

4. Petitioners are Likely to Succeed on Claim Four: Violation of the Administrative Procedure Act

Petitioners are likely to succeed on their Administrative Procedure Act (APA) claim. Under the *Accardi* doctrine, Petitioners have a right to set aside agency actions that violated agency procedures, rules, or instructions as arbitrary and capricious. *See Accardi*, 347 U.S. at 226 ("If petitioner can prove the allegation [that the agency failed to follow its rules in a hearing] he should receive a new hearing.").

Here, Respondents' revocation of Ms. Yao's OSUP violated ICE's own governing regulations, 8 C.F.R. § 241.4. Moreover, Respondents may also have violated ICE regulations by failing to properly execute a revocation of Ms. Yao's OSUP. Under 8 C.F.R. § 241.4(*l*), only the Executive Associate Commissioner, or in some instances the district director, is permitted to revoke the release of a noncitizen. Respondents have not provided Petitioners or their counsel with a Notice of Revocation. However, to the extent that Ms. Yao's OSUP has been (silently) revoked without authorization by the appropriate official, that revocation also violates the agency's own procedures under *Accardi*. Respondents' actions in detaining Petitioners were therefore arbitrary and capricious and violated the APA. *See M.S.L. v. Bostock*, 6:25-cv-01204-AA, 2025 WL 2430267, at *15 (D. Or. Aug. 21, 2025) (finding ICE's failure to follow own regulations regarding OSUP revocation to be "arbitrary and capricious," thereby violating the APA).

B. Petitioners Will Suffer Irreparable Harm in the Absence of a Temporary Restraining Order

As an initial matter, "[w]hen an alleged deprivation of constitutional right is involved, … no further showing of irreparable injury is necessary." *Book People, Inc. v. Wong*, 91 F.4th 318, 340-41 (5th Cir. 2024). Depriving Petitioners of their liberty without due process as required under the Constitution thus constitutes irreparable injury. Further, as courts in this district have held, "unlawful detention in an immigration context is inherently a substantial threat of irreparable injury." *Rojas Vargas v. Bondi*, No. 1:25-cv-01699-DAE, 2025 WL 3251728, *4 (W.D. Tex. Nov. 5, 2025); *Munoz v. Noem*, No. 1:25-CV-1753-RP, 2025 WL 3218241, at *5 (W.D. Tex. Nov. 7, 2025).

The stress and setting of immigration detention is particularly harmful for Petitioners. As explained above, B.W.'s continued detention poses a serious threat to her life, health, and well-being. She is currently experiencing serious and ongoing mental health crises, which place her at elevated risk of self-harm and require continuous medical supervision. She requires reliable access to her prescription medications and to her therapist, neither of which has been possible in detention. She also requires reliable access to her Ms. Yao, her only familial caregiver. Ms. Yao attests in her declaration that since being detained B.W. has made multiple threats of serious self-harm.

The second *Winter* factor thus weighs heavily in Petitioners' favor.

C. The Balance of Equities Tips in Petitioners' Favor

The final two *Winter* factors merge when the opposing party is a governmental agency. *Nken*, 556 U.S. at 435. As demonstrated above, Petitioners have been detained in violation of the Constitution. Respondents' have no substantial interest in continuing that detention. Petitioners' interest in not being confined, by contrast, is both substantial and fundamental.

Respondents will also not experience a significant burden from the proposed temporary restraining order: it will not bar them from lawfully removing Petitioners in the future or from otherwise enforcing immigration laws, within the lawful reach of those laws. As a result, the Court should find that the balance of the equities favors granting Petitioners' requested relief and that the public interest does not support Petitioners' continued confinement. The third and fourth *Winter* factors thus weigh heavily in Petitioners' favor.

D. Petitioners Have Demonstrated That All Four *Winter* Factors Weigh Heavily in Their Favor

Petitioners have demonstrated that they are likely to succeed on the merits of their claims, that they are likely to suffer irreparable harm in the absence of relief, and that the balance of equities and the consideration of the public interest tip sharply in their favor. Because the standards for a TRO are met, the Court should grant Petitioners' immediate release to restore the *status quo ante*—the "last uncontested status" between the parties. *United States v. FDIC*, 881 F.2d 207, 210 (5th Cir. 1989). Here, that would be to allow Petitioners to return to their family while continuing to abide by the terms of Ms. Yao's OSUP.

E. No Bond is Necessary

Upon issuance of a temporary restraining order, the Court has discretion to set the amount of security, including "no security at all," required "to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c); *A.T.N. Indus., Inc. v. Gross*, 632 F. App'x 185, 192 (5th Cir. 2015). Here, it is unlikely any harm will come to Respondents as a result of a grant of temporary relief and Respondents will incur negligible or zero financial costs. Petitioner asks the Court to exercise its discretion to waive the bond requirement.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' Motion for a TRO and Order to Show Cause; order Petitioners' immediate release from detention; bar Respondents from detaining Petitioners without providing a pre-deprivation hearing before a neutral adjudicator where ICE must establish by clear and convincing evidence that Petitioners are either a flight risk or a threat to public safety; and bar Respondents from transferring Petitioners outside of this juridical district or removing Petitioners from the United States during the pendency of this litigation and until further Order of this Court allowing removal or transfer.

Dated: December 24, 2025

Respectfully submitted,

/s/ Jeffrey T. Quilici

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically on December 24, 2025 in compliance with CV-5 and has been served on all counsel who have consented to electronic service and all other counsel by regular mail.

/s/ Jeffrey T. Quilici
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