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6
7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 Dunjie Weng

Petitioner,

10 v.

11 John Rathman, Warden of the Imperial
12 Retional Detention Facility;

13 Gregory J. ARCHAMBEAULT,
14 Field Office Director of the San Diego
Immigration and Customs Enforcement Office

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

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

20 Pam BONDI, in her Official Capacity,
21 Attorney General of the United States.

22 Respondents
23

NO. '26CV1478 RBM AHG

**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

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INTRODUCTION

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

6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), U.S. Const. article I, § 9, cl. 2 (the Suspension Clause), U.S. Const., amend IV and V, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

VENUE

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (c)(1) because Petitioner is physically detained within this district.

REQUIREMENTS OF 28 USC § 2243

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

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

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

EXHAUSTION

11. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if “administrative remedies are inadequate or not efficacious, pursuit of

1 administrative remedies would be a futile gesture, irreparable injury will result, or the administrative
2 proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)
3 (citation and quotation marks omitted)). Dunjie Weng asserts that exhaustion should be waived
4 because administrative remedies are (1) futile and (2) her continued detention results in irreparable
5 harm.

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7 12. It would be futile for Dunjie Weng to seek a bond hearing from an Immigration Judge.
8 His request would be summarily denied based on the current interpretation of the BIA’s recent
9 decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of Yajure Hurtado*, 29 I&N
10 Dec. 216 (BIA 2025).

11 13. Further, no statutory exhaustion requirements apply to Dunjie Weng’s claim of unlawful
12 custody in violation of his due process rights, and there are no administrative remedies that he needs
13 to exhaust. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940
14 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to
15 review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal.
16 2000) (same).

17 18 PARTIES

19 14. Dunjie Weng is a male citizen of China who entered the U.S. on January 15, 2024, and
20 has remained in the country since. *See* Affidavit of Dunjie Weng (“Dunjie Weng Aff.”). DHS
21 detained Dunjie Weng upon entry and later released him under supervision pursuant to 8 C.F.R. §
22 212.5. Dunjie Weng established a life in California and have work permit to work in the United
23 States. Prior to his second detention he was gainfully employed as a cook in a restaurant . ¶ 3-5. *Id.*
24

25 15. John Rathman, is the Warden of the Imperial Retional Detention Facility and Gregory J.
26 ARCHAMBEAULT, is the Field Office Director of the Immigration and Customs Enforcement, and
27 is named in his official capacity. ICE is the component of the DHS that is responsible for detaining
28 and removing noncitizens according to immigration law and oversees custody determinations. In his
official capacity, he is the legal custodian of Dunjie Weng

1 16. Daniel A. BRIGHTMAN, is the Field Office Director of the San Diego Immigration and
2 Customs Enforcement Office. In this capacity, he is responsible for the administration of
3 immigration laws and the execution of immigration enforcement and detention policy within ICE's
4 Los Angeles of Responsibility, including the detention of Petitioner. Respondent BRIGHTMAN
5 maintains an office and regularly conducts business in this district. Respondent BRIGHTMAN is
6 sued in his official capacity.

7
8 17. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
9 capacity. Among other things, ICE is responsible for the administration and enforcement of the
10 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he
11 is the legal custodian of Dunjie Weng.

12 18. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
13 DHS is the federal agency that encompasses ICE, which is responsible for administering and
14 enforcing the INA and all other laws related to the immigration of noncitizens. In her capacity as
15 Secretary, Respondent Noem has responsibility for the administration and enforcement of the
16 immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002,
17 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent
18 Noem is the ultimate legal custodian of Dunjie Weng.

19
20 19. Respondent Pam BONDI is the Attorney General of the United States and the most
21 senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She
22 has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General
23 delegates this responsibility to the EOIR, which administers the immigration courts and the BIA.

24 25 **FACTUAL ALLEGATIONS**

26 20. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
27 targeting people who are in regular removal proceedings in immigration court, many of whom
28 have pending applications for asylum or other relief. This "coordinated operation" is "aimed at

1 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
2 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
3 *Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23,
4 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
5 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
6 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
7 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
8 administration implemented a policy to drastically increase immigration arrests to a target of at
9 least 3,000 per day. According to White House officials like Stephen Miller, this directive
10 prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct
11 mass round-ups in public spaces rather than targeted investigations.

13 21. As a result, arrests of non-citizens with no criminal record surged by over 800%, and
14 two-thirds of those deported had no criminal history. This focus on quantity over public safety
15 led to a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
16 appointments, regardless of the status of their legal cases. This has created a climate of fear,
17 discouraging people from attending their mandatory hearings or ICE appointments.

18 22. In addition, individuals are now held for extended periods, sometimes days, in
19 temporary holding cells that are not designed for overnight or prolonged detention, often under
20 inhumane conditions. Government officials have justified these harsh conditions not as a matter
21 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason
22 for detention.

23 23. Moreover, given recent BIA decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A.
24 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), all noncitizens apprehended
25 within the interior of the U.S. who allegedly entered without admission or inspection have been
26 denied bond hearings. While the U.S. District Court for the Central District of California
27 recently certified a nationwide class of noncitizens denied by DHS and denied bond hearings for
28

1 having entered without admission or inspection and granted declaratory relief declaring that
2 members of the class are entitled to bond hearings, practitioners across the nation are reporting
3 that bonds are still being denied regularly. *See Lazaro Maldonado Bautista v Ernesto Santacruz,*
4 *Jr.*, 5:25-cv-01873, (C.D. Cal.). *See* 5:25-cv-01873.

5 24. The government's new campaign is also a significant shift from the previous DHS
6 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
7 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
8 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

9 25. Dunjie Weng fled China in 2024 as a result of the fear of further persecution he
10 endured there. On or around January 15, 2024, Dunjie Weng came into immigration custody
11 immediately after crossing the border into the United States through the Mexican border.
12 Dunjie Weng Aff. ¶ 2. DHS admitted Dunjie Weng into their custody for several days before
13 determining that he is not a danger to the community nor a flight risk and releasing him pursuant
14 to 8 C.F.R. § 212.5; *see also* Dunjie Weng Aff. ¶4- 5.

15 26. Upon his release, from DHS custody in January 2024, Dunjie Weng complied with
16 all instructions provided by immigration authorities. DHS released him without requiring a
17 bond and instructed him to report to the ICE office, which he did on multiple occasions. ¶ 3-4 *Id.*

18 27. During his time in the community, Dunjie Weng took affirmative steps to stabilize
19 his life and pursue lawful status in the United States. He retained an immigration attorney, filed
20 an asylum application, and obtained employment authorization and a Social Security number. ¶
21 5 *Id.* Dunjie Weng . He worked as a cook in a restaurant till his second detention. Dunjie Weng
22 has never been arrested and has never committed any crimes in this country. ¶ 5-6 *Id.*

23 28. On November 1, 2025, when Dunjie Weng reported to ICE in New York, he was
24 arrested by ICE and was taken into custody, without prior notice or warning. Dunjie Weng was
25 stunned and terrified, as he had no reason to anticipate that he could be re-detained after release
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1 from the ICE's custody without any reason. That same day, Dunjie Weng was arrested and
2 transported to Imperial Regional Adult Detention Facility.

3 29. Since his detention, Dunjie Weng has suffered significant emotional and physical
4 hardship. He reports feeling sad and depressed, experiencing poor sleep, ¶ 9 *Id.* He now seeks
5 release so that he may continue complying with supervision and pursue his asylum case. ¶ 11-
6 12 *Id.*

7
8 30. Currently, his asylum case was appealed and pending at BIA. *See* Automatic Case
9 Information for Dunjie Weng, attached as Exh. 1.

10 LEGAL ARGUMENT

11 31. Dunjie Weng's removal proceedings before the Immigration Judge are governed by INA
12 § 240 ("section 240 proceedings"). Section 240 proceedings provide important statutory protections,
13 including hearings before an Immigration Judge. *See* 8 U.S.C. § 1229a(a)(1), (a)(4).
14

15 32. In Dunjie Weng's particular circumstances, the Due Process Clause of the Constitution
16 makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing
17 before a neutral decision maker to determine whether circumstances have materially changed since
18 his release from custody in January 2024, such that detention would now be warranted on the basis
19 that he is a danger or a flight risk by clear and convincing evidence.

20 33. By statute and regulations, ICE has the ability to unilaterally revoke any noncitizen's
21 immigration bond determination or parole, and re-arrest the noncitizen at any time. 8 U.S.C. §
22 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE
23 the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17
24 I&N Dec. 637, 640 (BIA 1981), the BIA has recognized an implicit limitation on ICE's authority to
25 re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made
26 by an immigration judge, no change should be made by [the DHS] absent a change of
27 circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the
28 prior bond determination was made by an immigration judge and where the previous release

1 decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The
 2 Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
 3 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
 4 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

5
 6 34. ICE has further limited its authority as described in *Sugay*, and “generally only re- arrests
 7 [noncitizens] pursuant to § 1226(b) after a material change in circumstances.” *Saravia*, 280 F. Supp.
 8 3d at 1197, aff’d sub nom. *Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second Supp. Br. at 1,
 9 Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a
 10 noncitizen who had been previously released on bond only after a material change in circumstances.
 11 See *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

12
 13 35. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody
 14 is also constrained by the demands of due process. See *Hernandez*, 872 F.3d at 981 (“the
 15 government’s discretion to incarcerate non-citizens is always constrained by the requirements of due
 16 process”). See also *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-
 17 deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)
 18 (same, in parole context). Petitioner’s release from custody in October 2020 and ties to her family
 19 and community provide her with a protected liberty interest. See *Ortega v. Bonnar*, 415 F. Supp. 3d
 20 963 (N.D. Cal. Nov. 22, 2019).

21
 22 36. Federal district courts in California have repeatedly recognized that the demands of due
 23 process and the limitations on DHS’s authority to revoke a noncitizen’s release from custody set out
 24 in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
 25 on ICE’s supervision, like Dunjie Weng before ICE re-detains him. See, e.g., *Meza v. Bonnar*, 2018
 26 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
 27 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
 28 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);
Romero v. Kaiser, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022)

(Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

I. Petitioner Has a Protected Liberty Interest in His Conditional Release

37. The Due Process Clause protects Dunjie Weng's liberty from immigration custody: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

38. Since January 2024, Dunjie Weng exercised that freedom under ICE's order releasing him from custody. As he was released from custody, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-483. Respondents created a reasonable expectation that Dunjie Weng would be permitted to live and work in the United States without being subject to arbitrary arrest and removal.

39. This reasonable expectation creates constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also Texas v. United States*, 136 S. Ct. 2271 (2016) (explaining that "DACA involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional protections no matter how they may be characterized by Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests under constitutional law turns on the substance of

1 the interest recognized, not the name given that interest by the state or other independent source.”)
2 (internal quotations omitted).

3 40. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
4 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of his
5 parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form
6 the other enduring attachments of normal life.” *Id* at 482. The Court further noted that “the parolee
7 has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the
8 parole conditions.” *Id*. The Court explained that “the liberty of a parolee, although indeterminate,
9 includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on
10 the parolee and often others.” *Id*. In turn, “[b]y whatever name, the liberty is valuable and must be
11 seen within the protection of the [Fifth] Amendment.” *Id* at 482.

12 13 41. This basic principle—that individuals have a liberty interest in their conditional
14 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
15 occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-
16 parole program created to reduce prison overcrowding have a protected liberty interest requiring
17 pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released
18 on felony probation have a protected liberty interest requiring pre-deprivation process). As the First
19 Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the
20 level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
21 conditional release in the case before them with the liberty interest in parole as characterized by
22 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
23 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.
24 Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully
25 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
26 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at
27 482).

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

43. Here, when this Court compares the specific release in Dunjie Weng’s case “with the liberty interest in parole as characterized by *Morrissey*,” they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Dunjie Weng’s release “enables him to do a wide range of things open to persons” who have never been in custody or convicted of any crime, including to live at home, practice his faith, care for his child, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

II. Petitioner’s Liberty Interest Mandates a Hearing Before Any Re-Arrest or Revocation of Release from Custody

44. Dunjie Weng asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for about two years; (3) where no change in circumstances exist that would justify his lawful detention; and (4) where the only circumstance was ICE’s move to arrest as many people as possible because of the new administration, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of his custody release.

45. “Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Dunjie Weng’s] liberty interest against the [government’s] interest in the

1 efficient administration of” its immigration laws in order to determine what process he is owed
2 to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the
3 test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its
4 balancing test: “first, the private interest that will be affected by the official action; second, the
5 risk of an erroneous deprivation of such interest through the procedures used, and the probative
6 value, if any, of additional or substitute procedural safeguards; and finally the government’s
7 interest, including the function involved and the fiscal and administrative burdens that the
8 additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357
9 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Several district courts have applied the
10 *Mathews* factors in similar cases, and found that those in Petitioner’s position, noncitizens
11 granted the liberty of release pending removal proceedings, have due process rights. *See e.g.*,
12 *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22,
13 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *5 (N.D. Cal.
14 Aug. 21, 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
15 July 24, 2025); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *4
16 (N.D. Cal. Sept. 3, 2025).

17
18 46. The Supreme Court “usually has held that the Constitution requires some kind of a
19 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
20 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
21 are “the only remedies the State could be expected to provide” can post-deprivation process
22 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one
23 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is
24 negligible in preventing the kind of deprivation at issue” such that “the State cannot be required
25 constitutionally to do the impossible by providing pre-deprivation process,” can the government
26 avoid providing pre-deprivation process. *Id.*

1 47. Because, in this case, ICE is required to release Dunjie Weng from his unlawful
2 Custody and provide Dunjie Weng with notice and a hearing prior to any re-incarceration and
3 revocation of his liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56;
4 *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307,
5 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
6 awaiting involuntary civil commitment proceedings may not constitutionally be held in jail
7 pending the determination as to whether they can ultimately be recommitted). Under *Mathews*,
8 the balance weighs heavily in favor of Dunjie Weng's liberty and requires a pre-deprivation
9 hearing before a neutral adjudicator.
10

11 **III. Petitioner's Private Interest in His Liberty is Profound**

12 48. Under *Morrissey* and its progeny, individuals conditionally released from serving a
13 criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In
14 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
15 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
16 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
17 force to individuals like Dunjie Weng, who have been released pending civil removal
18 proceedings, rather than parolees or probationers who are subject to incarceration as part of a
19 sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest
20 given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
21 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the
22 courts have held that the parolee cannot be re-arrested without a due process hearing in which
23 they can raise any claims they may have regarding why their re-incarceration would be unlawful.
24 See *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Dunjie Weng retains a
25 truly weighty liberty interest even though he is under conditional release.
26
27

28 49. What is at stake in this case for Dunjie Weng is one of the most profound individual
interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision

1 releasing him from custody and to take away—without a lawful basis—his physical freedom, i.e.,
2 his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d
3 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has
4 always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*,
5 504 U.S. 71, 80 (1992). See also *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—
6 from government custody, detention, or other forms of physical restraint—lies at the heart of the
7 liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).
8
9

10 50. Thus, there is a clear profound private interest at stake in this case, which must be
11 weighed heavily when determining what process he is owed under the Constitution. See *Mathews*,
12 424 U.S. at 334-35.

13 **IV. The Government’s Interest in Re-Incarcerating Petitioner Without a Hearing is**
14 **Low and the Burden on the Government to Refrain from Re-Arresting Him Unless**
15 **and Until He is Provided a Hearing That Comports with Due Process is Minimal**

16 51. The government’s interest in detaining Dunjie Weng without a due process hearing is
17 low, and when weighed against Dunjie Weng’s significant private interest in his liberty, the scale
18 tips sharply in favor of enjoining Respondents to release Dunjie Weng from his unlawful custody
19 and refrain from re-arresting Dunjie Weng unless and until the government demonstrates by
20 clear and convincing evidence that he is a flight risk or danger to the community. It becomes
21 abundantly clear that the *Mathews* test favors Dunjie Weng when the Court considers that the
22 process he seeks—notice and a hearing regarding whether he has violated any conditions of his
23 release, and, if so, providing Dunjie Weng with a hearing before this Court (or a neutral
24 decision-maker) to determine whether there is clear and convincing evidence that Dunjie Weng
25 is a flight risk or danger to the community would impose only a *de minimis* burden on the
26 government, because the government routinely provides this sort of hearing to individuals like
27 Dunjie Weng
28

1 52. As immigration detention is civil, it can have no punitive purpose. The government's
2 only interest in holding an individual in immigration detention can be to prevent danger to the
3 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
4 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any lawful basis
5 for detaining Dunjie Weng has lived at liberty complying with the conditions of his release since
6 February 2024.

7
8 53. ICE determined Dunjie Weng not to be a danger to the community or a flight risk in
9 January 2024 and has done nothing to undermine that determination. To the contrary, he
10 complied with the terms of his release. *See Morrissey*, 408 U.S. at 482 ("It is not sophistic to
11 attach greater importance to a person's justifiable reliance in maintaining his conditional freedom
12 so long as he abides by the conditions on his release, than to his mere anticipation or hope of
13 freedom") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079,
14 1086 (2d Cir. 1971)).

15
16 54. It is difficult to see how the government's interest in ensuring his presence at the
17 moment of removal has materially changed since he was released in January 2024. The
18 government's interest in detaining Dunjie Weng at this time is therefore low. That ICE has a new
19 policy to make a minimum number of arrests each day under the new administration does not
20 constitute a material change in circumstances or increase the government's interest in detaining
21 him.

22 55. Moreover, the "fiscal and administrative burdens" that his immediate release and a
23 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
24 334-35. Dunjie Weng does not seek a unique or expensive form of process, but rather a routine
25 hearing regarding whether his order of release should be revoked and whether he should be re-
26 incarcerated.

27
28 56. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the
public of immigration detention are 'staggering': \$158 each day per detainee, amounting to a

1 total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. ICE’s unlawful action of placing
2 him in custody is more of a financial burden than releasing him and providing a pre-custody
3 hearing before any future re-arrest occurs.

4 57. In addition, providing Dunjie Weng with a hearing before this Court (or a neutral
5 decisionmaker) regarding release from custody is a routine procedure that the government
6 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
7 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
8 But there is no justifiable reason to re-incarcerate Dunjie Weng prior to such a hearing taking
9 place. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming
10 interest in being able to return [a parolee] to imprisonment without the burden of a new
11 adversary criminal trial if in fact she has failed to abide by the conditions of his parole . . . the
12 State has no interest in revoking parole without some informal procedural guarantees.” *Morrissey*,
13 408 U.S. at 483.
14

15 58. Releasing Dunjie Weng from unlawful custody and enjoining him re-arrest until ICE
16 (1) moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates
17 by clear and convincing evidence that Dunjie Weng is a flight risk or danger to the community.
18 *Hernandez*, 872 F.3d at 996.
19

20 **V. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**
21 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally**
22 **Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk**

23 59. Releasing Dunjie Weng from unlawful custody and providing Dunjie Weng a pre-
24 deprivation hearing would decrease the risk of Dunjie Weng being erroneously deprived of his
25 liberty. Before Dunjie Weng can be lawfully detained, he must be provided with a hearing before a
26 neutral adjudicator at which the government is held to show that there has been sufficiently changed
27 circumstances such that ICE’s January 2024 release from custody determination should be altered or
28 revoked because clear and convincing evidence exists to establish that Dunjie Weng is a danger to
the community or a flight risk.

1 61. On November 1, 2025 , Dunjie Weng did not receive this protection. Instead, he was
2 detained by ICE, without notice, despite demonstrating compliance with ISAP reporting, and there
3 have been no material changes in his circumstances.

4 62. By contrast, the procedure Dunjie Weng seeks—a hearing in front of a neutral
5 adjudicator at which the government must prove by clear and convincing evidence that
6 circumstances have changed to justify his detention before any re-arrest—is much more likely to
7 produce accurate determinations regarding factual disputes, such as whether a particular occurrence
8 constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.
9 1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions
10 not subject to measurement” are at issue, the “risk of error is considerable when just determinations
11 are made after hearing only one side”). “A neutral judge is one of the most basic due process
12 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds
13 by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of
14 an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker,
15 rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d
16 1081, 1091-92 (9th Cir. 2011).

17
18 63. Due process also requires consideration of alternatives to detention at any custody
19 determination hearing that may occur. The primary purpose of immigration detention is to ensure a
20 noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not
21 reasonably related to this purpose if there are alternatives to detention that could mitigate risk of
22 flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be
23 considered in determining whether Dunjie Weng’s reincarceration is warranted.
24

25 **CLAIMS FOR RELIEF**

26 **FIRST CLAIM FOR RELIEF**

27 **Violation of Procedural Due Process Under U.S. Const. Amend. V**

1 64. Dunjie Weng re-alleges and incorporates herein by reference, as is set forth fully herein,
2 the allegations in all the preceding paragraphs.

3
4 65. The Due Process Clause of the Fifth Amendment forbids the government from
5 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

6
7 66. Dunjie Weng has a vested liberty interest in his lawful conditional release. Due Process
8 does not permit the government to strip him of that liberty without a hearing before this Court. *See*
9 *Morrissey*, 408 U.S. at 487-488.

10
11 67. The Court must therefore order that ICE release Dunjie Weng from his current
12 unlawful custody.

13
14 68. Prior to any re-arrest, the government must provide her with a hearing before a neutral
15 adjudicator. At the hearing, the neutral adjudicator would evaluate, inter alia, whether clear and
16 convincing evidence demonstrates, taking into consideration alternatives to detention, that Dunjie
17 Weng is a danger to the community or a flight risk, such that her reincarceration is warranted.
18 During any custody determination hearing that occurs, this Court or, alternatively, a neutral
19 adjudicator must consider alternatives to detention when determining whether Dunjie Weng’s re-
20 incarceration is warranted.

21 **SECOND CLAIM FOR RELIEF**

22 **Violation of Substantive Due Process Under U.S. Const. Amend. V**

23 69. Dunjie Weng re-alleges and incorporates herein by reference, as is set forth fully herein,
24 the allegations in all the preceding paragraphs.

25
26 70. The Due Process Clause of the Fifth Amendment forbids the government from
27 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
28 amend. V.

1 71. Dunjie Weng has a vested liberty interest in his conditional release. Due Process does
2 not permit the government to strip him of that liberty without it being tethered to one of the two
3 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
4 community from danger. Since January 2024, Dunjie Weng has attended all his hearings and
5 reports to ICE. His continued participation thus demonstrates that he is neither a flight risk nor a
6 danger. Re-arresting him now would be punitive and violate his constitutional right to be free from
7 the unjustified deprivation of his liberty.
8

9 72. For these reasons, Dunjie Weng's continued unlawful custody and any subsequent re-
10 arrest without first being provided a pre-deprivation hearing would violate the Constitution.
11

12 73. The Court must therefore order that he be released from custody.
13

14 74. The Court must order the government to not re-arrest him in any subsequent action
15 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
16 evaluate, inter alia, whether clear and convincing evidence demonstrates, taking into consideration
17 alternatives to detention, that Dunjie Weng is a danger to the community or a flight risk, such that
18 his re-incarceration is warranted. During any custody determination hearing that occurs, this Court
19 or, in the alternative, a neutral adjudicator must consider alternatives to detention when
20 determining whether Dunjie Weng's re-incarceration is warranted.
21

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Dunjie Weng prays that this Court grant the following relief:
24

- 25 (1) Assume jurisdiction over this matter;
26 (2) Declare that ICE's November 1, 2025, apprehension and detention of Dunjie Weng
27 was an unlawful exercise of authority because the ICE officer provided no reason
28 that he presents a danger to the community or is flight risk;
(3) Order ICE to immediately release Dunjie Weng from his unlawful detention;

- 1 (4) Enjoin re-arresting Dunjie Weng unless and until a hearing can be held before a
2 neutral adjudicator to determine whether his re-incarceration would be lawful
3 because the government has shown that he is a danger or a flight risk by clear and
4 convincing evidence;
5 (5) Award reasonable costs and attorney fees; and
6 (6) Grant such further relief as the Court deems just and proper.
7

8 Respectfully submitted this march 9,2026.

9 By counsel,

10 /s/ Hovhannes Bayburtski
11 _____

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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 Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on March 9, 2026, in Studio City, CA.

/s/ Hovhannes Bayburtski

Hovhannes Bayburtski, Esq.
Attorney for Petitioner