

Hovhannes Bayburtski
CA Bar No. 348506
Vichi Law, PC
12400 Ventura Blvd, #411
Studio City, CA 91604
Telephone:(310)901-9112
Email: hovbaylaw@gmail.com; globallawusa@gmail.com
Attorney for Petitioner

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Dunjie Weng
Petitioner,
v.

NO.

John Rathman, Warden of the Imperial
Regional Detention Facility;

**PETITIONER'S NOTICE OF MOTION
AND EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

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

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

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; and

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

Respondents

NOTICE OF MOTION

Petitioner Dunjie Weng applies to this Honorable Court for a temporary restraining order enjoining Respondents Warden of the Imperial Regional Detention Facility, Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in his official capacity as the U.S. Attorney General, (1) from continuing to detain her based on an unlawful action by ICE, (2) ordering her immediate release from immigration detention; and (3) from re-arresting Dunjie Weng until he is afforded a hearing before a neutral decision-maker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

If the Court deems oral argument necessary, Petitioner requests to appear by video.
Respectfully submitted this March 10, 2026.

By counsel,

/s/Hovhannes Bayburtski

Hovhannes Bayburtski
CA Bar No. 348506
Vichi Law, PC
12400 Ventura Blvd, #411
Studio City, CA 91604
Telephone:(310)901-9112
Email: hovbaylaw@gmail.com; globallawusa@gmail.com

INTRODUCTION

Petitioner, Dunjie Weng, has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Imperial Regional Detention Facility ("Imperial") since November 1, 2025, after having complied with the conditions of his release from the custody of the Department of Homeland Security (DHS) since he was released under supervision in January 1 2024. For more than one year and nine months, Dunjie Weng has appeared at appointments, and appeared in

1
2 Immigration Court. He was diligently pursuing asylum before the Executive Office of Immigration
3 Review (EOIR).

4 Dunjie Weng's current detention may be permitted under the Constitution and Immigration
5 and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that
6 he is a flight risk or danger to the community, or if her removal is imminent. As a hardworking
7 partner and community member with no criminal history, Dunjie Weng is not a flight risk or danger.
8 Thus, Dunjie Weng's continued detention without a bond hearing before a neutral decision-maker
9 violates her rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const.
10 amend. V.

11 As a result of his arrest and detention, Dunjie Weng is suffering irreparable and ongoing
12 harm. The unconstitutional deprivation of "physical liberty" unquestionably constitutes irreparable
13 injury."

14 *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from
15 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
16 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,
17 690 (2001).

18 In light of this irreparable harm, and because he is likely to succeed on the merits of his
19 due process claims, Dunjie Weng respectfully requests that this Court issue an *ex parte* temporary
20 restraining order ("TRO") immediately releasing him from custody and enjoining the government
21 from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral
22 decision maker. Confronted with substantially identical facts and legal issues, this and other
23 courts in this circuit have recently granted the exact relief Petitioner seeks. *See Gonzalez v. Noem*,
24 No. 5:25-cv-02054-ODW (ADSx), 2025 WL 2633187 (C.D. Cal. Aug. 13, 2025); *Arrazola-*
25 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15,
26 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*,
27 2025 WL2617255 * 11 (E.D. Cal Sept. 9, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4
28 (N.D. Cal. July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL

2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction).

To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Dunjie Weng out of this District and removing him from the country until these proceedings have concluded.

STATEMENT OF FACTS AND CASE

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse or at the ICE office and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, <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 Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump administration implemented a policy to drastically increase immigration arrests to a target of at least 3,000 per day. According to White House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct mass round-ups in public spaces rather than targeted investigations.

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

In addition, individuals are now held for extended periods, sometimes days, in temporary holding cells that are not designed for overnight or prolonged detention, often under inhumane

1
2 conditions. Government officials have justified these harsh conditions not as a matter of
3 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
4 detention.

5 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 Dunjie Weng fled China in 2024 as a result of the persistent persecution he endured there
10 and fear of future persecution. On or around January 15, 2024, Dunjie Weng came into immigration
11 custody immediately after crossing the border into the United States. *Dunjie Weng Aff.* ¶ 2. DHS
12 admitted Dunjie Weng into their custody for approximately three days before determining that he is
13 not a danger to the community nor a flight risk and releasing him pursuant to 8 C.F.R. § 212.5; *see*
14 *also Dunjie Weng Aff.* ¶¶ 2- 3.

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

18 During his time in the community, Dunjie Weng took affirmative steps to stabilize his life
19 and pursue lawful status in the United States. He retained an immigration attorney, filed an asylum
20 application, and obtained employment authorization and a Social Security number. Dunjie Weng
21 worked as a cook in a restaurant. ¶ 5 *Id.* Dunjie Weng has never been arrested and has never
22 committed any crimes in this country. ¶ 6 *Id.* On November 10, 2025, when Dunjie Weng reported
23 to ICE in Los Angeles, he was arrested by ICE officer. That same day, Dunjie Weng was
24 transported to the Imperial Regional Detention Facility. ¶ 9 *Id.*

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

28 Currently, his asylum case is pending at BIA. *See Automatic Case*

Information for Dunjie Weng, attached as Exh. 1.

LEGAL ARGUMENT

Dunjie Weng is entitled to a temporary restraining order if he establishes that she is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction 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) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Dunjie Weng does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Dunjie Weng overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). Dunjie Weng notified respondents’ counsel on February 26, 2026 that he would be filing the motion by email to the U.S. Attorney’s Office email address for habeas petition filings. Dunjie Weng also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025) (granting ex parte temporary restraining order in similar circumstances); *Gurwinder Singh v. Bowen*, No. 5:25-cv-03322-ODW (AGRx), (granting Ex Parte Temporary Restraining Order (C.D. Cal. Dec. 11, 2025)) (on file with court); *Francisco Longoria v. Noem*, No. 5:25-cv-03098-ODW (DFMx), (granting Unopposed Ex Parte Temporary Restraining Order (C.D. Cal. Nov. 25, 2025)) (on file with court); *Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (ADSx), 2025 WL 2633187 (C.D. Cal. Aug. 13, 2025) (referenced as supporting TRO analysis) and

Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug 15, 2025) (referenced as supporting TRO analysis).

I. Petitioner Warrants A Temporary Restraining Order

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Dunjie Weng is likely to remain in unlawful custody in violation of her due process rights without intervention by this Court. Dunjie Weng will continue to suffer irreparable injury if he continues to be detained without due process.

a. Petitioner is likely to succeed in the merits because Petitioner’s detention violates substantive due process

The Due Process Clause applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government’s deprivation of an individual’s liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 (“[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can

1
2 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
3 absent, immigration detention serves no legitimate government purpose and becomes
4 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
5 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
6 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
7 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
8 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the
9 government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

10 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
11 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
12 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
13 pursuing and completing deportation proceedings, it could become necessary then to inquire
14 whether the detention is not to facilitate deportation, or to protect against risk of flight or
15 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)
16 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—
17 that is, constitutional challenges to applications of the statute as we have now read it.”).

18 Dunjie Weng, who has no criminal record and who is diligently pursuing her immigration
19 case, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not justified
20 by a legitimate purpose, violating his substantive due process rights. Indeed, when Respondents
21 chose to release Dunjie Weng from custody in Janaury 2024, that decision represented their finding
22 that he was neither a danger nor a flight risk. *See Saravia* at 1176 (N.D. Cal. 2017), *aff’d sub nom.*
23 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)) (“Release reflects a determination by
24 the government that the noncitizen is not a danger to the community or a flight risk.”). No material
25 changes in circumstances have transpired since to disturb that finding.

26 *First*, because Dunjie Weng had no criminal history, and has had no intervening criminal
27 history or arrests since his release, there is no credible argument that he is a danger to the
28 community.

1
2 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
3 a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
4 F.3d at 990-91. There is no basis to argue that Dunjie Weng, who was arrested by Respondents
5 *while appearing at her scheduled asylum interview* is a flight risk. Moreover, Dunjie Weng has a
6 viable path toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S.*
7 *Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is
8 not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
9 remain in the United States). Dunjie Weng is not a flight risk, given that he has promptly
10 communicated with his officer, and ICE. At the time of his arrest, Dunjie Weng had filed his Form
11 I- 589, Application for Asylum and Withholding of Removal, and he has every intention of
12 continuing to pursue his applications for immigration relief. Now after the Immigration Judge
13 denied his asylum application, he timely filed appeal to BIA and the appeal is pending,

14 In sum, Dunjie Weng's actions since Respondents first released her confirm that he is neither
15 a danger nor a flight risk. Indeed, his ongoing compliance and community ties compel the
16 conclusion that he is even *less* of a danger or flight risk than when he was initially released.
17 Accordingly, Dunjie Weng's ongoing detention is unconstitutional, and substantive due process
18 principles require his immediate release.

19 **b. Petitioner is likely to succeed on the merits of his claim that the**
20 **Constitution requires a hearing before a neutral arbiter prior to any re-**
21 **incarceration by ICE.**

22 Dunjie Weng is likely to succeed on his claim that, in her particular circumstances, his
23 current detention is unlawful because the Due Process Clause of the Constitution prevents
24 Respondents from re-arresting her without first providing a pre-deprivation hearing before a neutral
25 adjudicator where the government demonstrates by clear and convincing evidence that there has
26 been a material change in circumstances such that he is now a danger or a flight risk.

27 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
28 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

1
2 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
3 immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
4 (BIA 1981), the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.
5 There, the BIA held that “where a previous bond determination has been made by an immigration
6 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
7 DHS “requires a showing of changed circumstances both where the prior bond determination was
8 made by an immigration judge *and* where the previous release decision was made by a DHS
9 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*
10 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed
11 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
12 circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent
13 changed circumstances ... ICE cannot redetain Panosyan.”).

14 ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
15 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
16 Supp. 3d at 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
17 (9th Cir. 2018) (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
18 under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously
19 released from custody only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d
20 at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

21 ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
22 also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.
23 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
24 requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE
25 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Dunjie
26 Weng’s weighty interest in his freedom from unlawful detention.

27 Federal district courts in California have repeatedly recognized that the demands of due
28 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in

DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on ICE release, like Dunjie Weng, *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *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); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, *Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza et al. v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond hearing violated the Due Process Clause; the court enjoined the government from re-detaining him without first providing a bond hearing where it must prove by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

Courts analyze procedural due process claims, such as this one, in two steps: the first asks whether a protected liberty interest exists under the Due Process Clause, and the second examines the procedures necessary to ensure that any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

1. Petitioner has a protected liberty interest in his conditional release.

The Due Process Clause protects Dunjie Weng's liberty from immigration custody: "Freedom from imprisonment—from government custody, detention, or other forms of physical

1
2 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*,
3 533 U.S. 678,
4 690 (2001).

5 Since January 2024, Dunjie Weng has exercised that freedom under DHS’s own grant of
6 release under supervision. Accordingly, he retains a weighty liberty interest under the Due Process
7 Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520
8 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v.*
9 *Brewer*, 408 U.S. 471, 482-483 (1972).

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

20 This basic principle—that individuals have a liberty interest in their conditional release—
21 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See,*
22 *e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program
23 created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation
24 process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
25 probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit
26 has explained, when analyzing the issue of whether a specific conditional release rises to the level
27 of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
28 conditional release in the case before them with the liberty interest in parole as characterized by

1
2 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
3 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.
4 Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
5 lawfully revocable—has a liberty interest that entitles him to constitutional due process before he
6 is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408
7 U.S. at 482).

8 In fact, it is well-established that an individual maintains a protectable liberty interest even
9 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
10 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
11 considerations support the notion that an inmate released on parole by mistake, because he was
12 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
13 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
14 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
15 (internal quotation marks and citation omitted).

16 Here, when this Court “‘compar[es] the release in [LTL.’s case], with the liberty interest in
17 parole as characterized by *Morrissey*,” they bear similar features in liberty interests. *See*
18 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Dunjie Weng’s release “enables him to do
19 a wide range of things open to persons,” including to live at home, work, care for her family, and
20 “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*,
21 408 U.S. at 482.

22 **2. Petitioner’s liberty interest mandates his release from unlawful
23 custody and a hearing before any re-arrest.**

24 Dunjie Weng asserts that, here, (1) where his detention would be civil; (2) where he has been
25 at liberty for about two years, during which time he has appeared at all of her immigration court
26 Hearings, ICE appointments and asylum interview; (3) where he has a viable asylum claim (4)
27 where no change in circumstances exist that would justify his lawful detention; and (5) where the
28 only circumstance that has changed was ICE’s move to arrest as many people as possible under the

1
2 new administration's initiative, due process mandates that he be released from his unlawful custody
3 and receive notice and a hearing before a neutral adjudicator *before* any re-arrest or revocation of his
4 custody release.

5 "Adequate, or due, process depends upon the nature of the interest affected. The more
6 important the interest and the greater the effect of its impairment, the greater the procedural
7 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
8 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
9 "balance [Dunjie Weng's] liberty interest against the [government's] interest in the efficient
10 administration of" its immigration laws to determine what process he is owed to ensure that ICE
11 does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test outlined in
12 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first,
13 the private interest that will be affected by the official action; second, the risk of an erroneous
14 deprivation of such interest through the procedures used, and the probative value, if any, of
15 additional or substitute procedural safeguards; and finally the government's interest, including the
16 function involved and the fiscal and administrative burdens that the additional or substitute
17 procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424
18 U.S. 319, 335 (1976)).

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

28 Because, in this case, the provision of a pre-deprivation hearing is both possible and

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

10 **(a) Petitioner’s private interest in her liberty is profound.**

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

25 What is at stake in this case for Dunjie Weng is one of the most profound individual interests
26 recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a
27 non-citizen from custody and be able to take away his physical freedom, i.e., his “constitutionally
28 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.

2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“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.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

(b) The government’s interest in re-incarcerating Petitioner without a hearing is low and the burden on the government to refrain from re-arresting him until he is provided a hearing is minimal.

The government’s interest in maintaining an unlawful detention without a due process hearing is low, and when weighed against Dunjie Weng’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping him in unlawful custody; (2) re-arresting Dunjie Weng unless and until the government demonstrates to a neutral adjudicator by clear and convincing evidence that he is a flight risk or danger to the community; and (3) removing him from the United States in violation of an agency order and district court injunction. It becomes abundantly clear that the *Mathews* test favors Dunjie Weng when the Court considers that the process he seeks—notice and a hearing regarding whether release from custody should be revoked—is a standard course of action for the government. Providing Dunjie Weng with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Dunjie Weng is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Dunjie Weng.

As immigration detention is civil in nature, it cannot serve a punitive purpose. The government’s only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See*

1
2 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
3 basis for detaining Dunjie Weng when he was released after a DHS' determination in November
4 2023, and since has lived at liberty in the Chinese community, working as a cook in restaurant
5 without any criminal or civil traffic infractions.

6 In January 2024, DHS officers determined that Dunjie Weng was not a flight risk or a danger
7 to the community and there are no material changes in circumstances to undermine that
8 determination. See *Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a
9 person’s justifiable reliance in maintaining his conditional freedom so long as he abides by the
10 conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States*
11 *ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

12 It is difficult to see how the government’s interest in detaining Dunjie Weng has materially
13 changed since he was released in January 2024, absent any material circumstances indicating he
14 is a danger to the community or a flight risk. The government’s interest in detaining Dunjie Weng at
15 this time is extremely low. That ICE has a new policy to make a minimum number of arrests each
16 day under the new administration does not constitute a material change in circumstances or increase
17 the government’s interest in detaining him. See “Trump officials issue quotas to ICE officers to
18 ramp up arrests,” *Washington Post* (January 26, 2025), available at:
19 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>;
20 “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9,
21 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
22 [sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen Miller, a senior
23 White House official, told Fox News that the White House was looking for ICE to arrest 3,000
24 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people
25 in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported
26 the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar
27 year.”).

28 Moreover, the “fiscal and administrative burdens” that his immediate release and a lawful

1
2 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
3 Dunjie Weng does not seek a unique or expensive form of process, but rather a routine hearing
4 regarding whether his release should be revoked and whether he should be re-incarcerated.

5 As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
6 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
7 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

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

18 Releasing Dunjie Weng from unlawful custody and enjoining Dunjie Weng’s re-arrest until
19 ICE (1) moves for a custody re-determination before an IJ and (2) demonstrates by clear and
20 convincing evidence that Dunjie Weng is a flight risk or danger to the community is far *less* costly
21 and burdensome for the government than keeping him detained. *Hernandez*, 872 F.3d at 996.

22 **(c) Without a due process hearing prior to any re-arrest, the
23 risk of erroneous deprivation of liberty is high.**

24 Releasing Dunjie Weng from unlawful custody and providing Dunjie Weng a pre-
25 deprivation hearing would decrease the risk of his being erroneously deprived of his liberty. Before
26 Dunjie Weng can be lawfully detained, he must be provided with a hearing before a neutral
27 adjudicator at which the government is held to show that there has been sufficiently changed
28 circumstances; such circumstances that ICE’s November 2023 release should be altered or revoked

1
2 because clear and convincing evidence exists to establish that Dunjie Weng is a danger to the
3 community or a flight risk.

4 The procedure Dunjie Weng seeks—a hearing in front of a neutral adjudicator at which the
5 government must prove by clear and convincing evidence that circumstances have changed to
6 justify his detention *before* any re-arrest—is much more likely to produce accurate determinations
7 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
8 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when
9 “delicate judgments depending on credibility of witnesses and assessment of conditions not
10 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*
13 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that
14 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
15 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
16 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

24 As the above-cited authorities show, Dunjie Weng is likely to succeed on his claim that the
25 current arrest and detention that ICE effected on November 1, 2025 are unlawful. The Due Process
26 Clause requires notice and a hearing before a neutral decision-maker before any reincarceration
27 by ICE. And, at the very minimum, she clearly raises serious questions regarding this issue, thus
28 also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

Dunjie Weng will suffer irreparable harm if he remains detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).

Dunjie Weng is a citizen of China who presented himself at the Mexican border on January, 2024, in order to seek asylum in the United States. After several days in custody, DHS released him without bond and placed him on supervision, which he diligently complied with by reporting regularly to ICE and participating in the Intensive Supervision Appearance Program. Dunjie Weng followed all reporting requirements, and he was never formally warned or notified that he was out of compliance. After obtaining work authorization and a Social Security number, Dunjie Weng worked as a cook. He has never been arrested or committed any crimes. Despite his good-faith

1
2 compliance and lack of criminal history, Dunjie Weng was unexpectedly arrested on November 10,
3 2025 when he reported to ICE. He is now detained at the Imperial Detention Facility, where he
4 suffers from depression, poor sleep. Dunjie Weng has sought bond but was denied without
5 meaningful review, and due to language barriers and lack of access to legal resources, he was unable
6 to learn about habeas relief until recently. Dunjie Weng intends to continue fully complying with all
7 conditions of release and to pursue his asylum claim, and each additional day of detention causes
8 him significant physical and emotional harm.

9 As detailed *supra*, Dunjie Weng contends that his re-arrest, absent a hearing before a neutral
10 adjudicator, violates his due process rights under the Constitution. It is clear that “the deprivation
11 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
12 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a
13 temporary restraining order is necessary to prevent Dunjie Weng from suffering irreparable harm by
14 being subject to unlawful and unjust detention.

15 **III. The Balance of Equities and the Public Interest Favor Granting this Temporary
16 Restraining Order**

17 The balance of equities and the public interest undoubtedly favor granting this temporary
18 restraining order.

19 First, the balance of hardships strongly favors Dunjie Weng. The government cannot suffer
20 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*,
21 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any
22 legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
23 government cannot allege harm arising from a temporary restraining order or preliminary
24 injunction ordering it to comply with the Constitution.

25 Further, any burden imposed by requiring the ICE to release Dunjie Weng from unlawful
26 custody and refrain from re-arrest unless and until he is provided a hearing before a neutral is both
27 *de minimis* and clearly outweighed by the substantial harm he will suffer as if she is detained. *See*
28 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of

1
2 affording fair procedures to all persons, even though the expenditure of governmental funds is
3 required.”).

4 A temporary restraining order is in the public interest. First and most importantly, “it
5 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
6 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
7 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
8 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
9 effectively be granted permission to detain Dunjie Weng in violation of the requirements of Due
10 Process.

11 “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a
12 party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
13 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction
14 that ensures that individuals are not deprived of their liberty and held in immigration detention
15 because of bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*,
16 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a
17 constitutional right has been violated, because all citizens have a stake in upholding the
18 Constitution.”).

19 Therefore, the public interest overwhelmingly favors entering a temporary restraining
20 order and preliminary injunction.

21 CONCLUSION

22 For all the above reasons, this Court should find that Dunjie Weng warrants a temporary
23 restraining order and a preliminary injunction ordering that Respondents (1) release him from his
24 unlawful custody; (2) refrain from re-arresting him unless and until he is afforded a hearing before a
25 neutral adjudicator on whether a change in custody is justified by clear and convincing evidence
26 that he is a danger to the community or a flight risk; and (3) refrain from sending him to any place
27 outside of the United States.

Respectfully submitted this March 10, 2026.

By counsel,

/s/ Hovhannes Bayburtski

Hovhannes Bayburtski, Esq. CABar No. 348506
Attorney for Petitioner