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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LAP NEOU,

Petitioner-Plaintiff,

v.

SERGIO ALBARRAN, Field Office
Director, San Francisco Field Office, U.S.
Immigration and Customs Enforcement;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; and
PAM BONDI, Attorney General of the
United States,

Respondents-
Defendants.

Case No. 3:25-cv-08034-JSC

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

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INTRODUCTION

The government's position suffers from two fatal flaws. On jurisdiction, the government pretends that Mr. Neou's re-detention is a hypothetical possibility, even after immigration officers have expressly stated their intent to re-detain Mr. Neou and have already tried to do so. The Court need not wait until the constitutional violation is complete to intervene. On the merits, the government sidesteps the core issue: *re*-detention of a person who has lived in the community and raised a family for over a decade. The government relies on cases that do not address the due process implications of re-detention, while largely ignoring the growing chorus of cases that do. The Court should grant the preliminary injunction and keep Mr. Neou's family intact while this litigation proceeds.

FACTS AND PROCEDURAL HISTORY

The facts are set forth in Mr. Neou's motion and are largely undisputed. In short, Mr. Neou entered the United States as a child refugee, became a lawful permanent resident, and was ordered removed in 2011 based on a robbery conviction. In 2012, Immigration and Customs Enforcement ("ICE") released him on an order of supervision, with which he has fully complied, because ICE could not remove him to Cambodia and found he did not pose a danger or flight risk. *See* Dkt. No. 1-1 at 129-43. Today, Mr. Neou is a single parent to three children, one of whom has special needs. A state court vacated Mr. Neou's robbery conviction on August 21, 2025, and Mr. Neou filed a motion to reopen his removal proceedings based on the vacatur on September 3, 2025. Dkt. No. 1-1 at 34, 70. ICE attempted to re-detain Mr. Neou in violation of a permanent injunction at his annual check-in appointment on September 8, 2025. Dkt. No. 1-1, Declaration of Jingni Zhao ("Zhao Decl.") ¶¶ 5-6; *see Chhoeun v. Marin*, 442 F. Supp. 3d 1233 (C.D. Cal. 2020). ICE directed Mr. Neou to return on October 8, 2025, with a completed travel document application, to be re-detained. Zhao Decl. ¶ 8.

Mr. Neou filed this action and a motion for a temporary restraining order on September 22, 2025. Dkt. Nos. 1, 3. The same day, the Court set a briefing a schedule and hearing date and ordered the parties to meet and confer regarding whether Respondents-Defendants would "agree not to detain Petitioner-Plaintiff ahead of a hearing on a preliminary injunction motion." Dkt. No.

6 at 1. The parties then stipulated that ICE would not re-detain Mr. Neou at his check-in on October 8, 2025, and instead would provide him a notice under the *Chhoeun* injunction, which would prevent his re-detention before October 22, 2025. Dkt. No. 10 at 1. The parties also agreed that Mr. Neou's motion could be considered a motion for a preliminary injunction and proposed a new briefing schedule and hearing date, which the Court approved. Dkt. Nos. 10, 12.¹

ARGUMENT

This Court should grant Mr. Neou's request for a preliminary injunction. The government's opposition rests on a fundamental misunderstanding of Mr. Neou's challenge to re-detention and provides no persuasive reason for this Court to depart from the consensus of numerous other courts asserting jurisdiction over similar claims and recognizing that noncitizens, like Mr. Neou, are entitled to due process before the government revokes release. This Court should reject the government's arguments and find that jurisdiction is proper, Mr. Neou is likely to prevail on the merits, and the remaining equitable factors favor injunctive relief.

I. This Court Has Jurisdiction and the Government's Arguments to the Contrary Rely on Inapposite Cases.

This Court has jurisdiction over Mr. Neou's challenge to his imminent re-detention by ICE. In arguing otherwise, the government invokes the "in custody" requirement for habeas corpus and a jurisdiction-stripping provision of the Immigration and Nationality Act ("INA"), but on both counts it relies on plainly distinguishable cases. The Court should exercise its jurisdiction over Mr. Neou's due process claim, as numerous other courts have done in similar circumstances.

A. Habeas Is Available to Challenge Future Confinement and, in Any Event, the Government Does Not Contest the Court's Federal Question Jurisdiction.

Where ICE has made explicit its intention to re-detain him, Mr. Neou need not wait until he is sitting in a detention facility to invoke habeas corpus. It is well-established that habeas is available to attack future confinement, as Mr. Neou does here. As an initial matter, the

¹ On the day of this filing, Mr. Neou attended his check-in and an ICE officer instructed him to return on December 8, 2025. As of this afternoon, the Executive Office for Immigration Review website reflects that the immigration judge granted Mr. Neou's motion to reopen on October 7, 2025. Mr. Neou proceeds with filing this brief to adhere to the parties' stipulated briefing schedule, but has informed Respondents-Defendants of today's developments and intends to meet and confer with Respondents-Defendants as soon as possible.

1 government acknowledges that a person does not need to be in physical custody to seek habeas
 2 relief. Dkt. No. 13, Respondents-Defendants' Opposition ("Opp.") at 7. The restrictions that ICE
 3 imposes on Mr. Neou's freedom through his order of supervision—including requirements to
 4 report to ICE regularly, submit to medical or psychiatric examination upon ICE's request, and
 5 notify ICE in advance of traveling outside the state—satisfy the "in custody" requirement for
 6 habeas. *See* Dkt. No. 1-1 at 140-43; *Sun v. Santacruz*, No. 5:25-CV-02198-JLS-JC, 2025 WL
 7 2730235, at *3 (C.D. Cal. Aug. 26, 2025) ("*Qian Sun*") (explaining that order of supervision
 8 constitutes custody for habeas purposes). The government contends that a challenge to future re-
 9 detention does not sound in habeas, *see* Opp. at 7-8, but that is not the law. "[T]he Supreme Court
 10 has held that 'habeas corpus relief is not limited to immediate release from illegal custody, but . . .
 11 is available as well to attack future confinement and obtain future releases.'" *Ortega v. Kaiser*,
 12 No. 25-CV-05259-JST, 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025) (quoting *Preiser v.*
 13 *Rodriguez*, 411 U.S. 475, 487 (1973)); *see also Qian Sun*, 2025 WL 2730235, at *3 (noting that
 14 its conclusion that habeas is available "accords with those of several other district courts within
 15 the Ninth Circuit," and collecting cases); *Giorges v. Kaiser*, No. 25-CV-07683, 2025 WL
 16 2615063, at *3 (N.D. Cal. Sept. 9, 2025).

17 The government seizes on one case that went its way, but that court found based on the
 18 record before it that the petitioner's re-detention was a mere possibility. *See* Opp. at 8. Mr.
 19 Neou's claim does not challenge, as the government puts it, "his hypothetical future
 20 confinement." Opp. at 8. The record here reflects that an armed ICE officer stated the agency's
 21 intention to re-detain Mr. Neou at his September 8 check-in, gave Mr. Neou's counsel an
 22 administrative warrant for Mr. Neou's arrest, instructed Mr. Neou to return on October 8 for re-
 23 detention, and told him the agency would not cease its efforts to re-detain him. Zhao Decl. ¶¶ 6-8.
 24 ICE has deferred Mr. Neou's detention for two weeks after taking note of the *Chhoeun* injunction,
 25 and after this Court directed the parties to meet and confer. *See* Dkt. Nos. 6, 10. But it is difficult
 26 to imagine how much clearer the agency could be that it intends to re-detain Mr. Neou. The writ
 27 is available under these circumstances. Finally, even if habeas were unavailable, the government
 28 takes no issue with Mr. Neou's alternative pleading of federal question jurisdiction. *See Ortega*,

2025 WL 2243616, at *3 (“Accordingly, the Court finds that Ortega presents a valid habeas claim, and even if he did not, the Court maintains federal question jurisdiction over his claims.”). There is no jurisdictional defect here.

B. Section 1252(g) is No Barrier to Mr. Neou’s Due Process Claim Because He Challenges Re-Detention, Not Removal.

Detention and removal are distinct actions by ICE, and the INA only bars challenges to the latter. “The Supreme Court has given a ‘narrow reading’” to 8 U.S.C. § 1252(g). *Ibarra-Perez v. United States*, --- F.4th ---, No. 24-631, 2025 WL 2461663, at *6 (9th Cir. Aug. 27, 2025) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm. (“AADC”)*, 525 U.S. 471, 487 (1999)). That provision “applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *AADC*, 525 U.S. at 482 (quoting 8 U.S.C. § 1252(g)). It does not “sweep in any claim that can technically be said to ‘arise from’ the three listed actions.” *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion). Accordingly, district courts across California have held that § 1252(g) does not bar challenges to re-detention. *See, e.g., Ortega*, 2025 WL 2243616, at *3 (holding that the petitioner’s challenge to “potential detention or removal to a country *other* than” that designated in removal proceedings was not barred); *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *3 (E.D. Cal. Aug. 20, 2025) (“*Yuhua Yang*”) (“Petitioner’s claims do not challenge his final removal order but only his re-detention and such claims are not barred by § 1252(g)”; *Qian Sun*, 2025 WL 2730235, at *4 (asserting jurisdiction over petition challenging “re-detention absent any hearing and subsequent removal to a third country”); *see also Arce v. United States*, 899 F.3d 796, 799-800 (9th Cir. 2018) (holding that damages claim arising from wrongful removal was not barred); *Kong v. United States*, 62 F.4th 608, 617-18 (1st Cir. 2023) (holding that damages claim arising from allegedly unlawful re-detention was not barred).

In every case the government cites, the petitioner asked a district court to enjoin their removal—not the case here. In *Rauda*, for example, the petitioner sought a temporary restraining order blocking the government from removing him from the United States. *Rauda v. Jennings*, 55

1 F.4th 773 (9th Cir. 2022). As another court has explained, *Rauda* is “inapposite” where “the basis
 2 of Petitioner’s claim is not a challenge to a removal but rather, that his redetention is
 3 unconstitutional.” *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *1
 4 n.1 (E.D. Cal. July 14, 2025); *see also Ibarra-Perez*, 2025 WL 2461663, at *8 (finding *Rauda*
 5 inapplicable where the petitioner “does not challenge ICE’s discretionary authority about ‘when’
 6 to remove him or ‘whether’ to remove him”). *Camarena* likewise involved “habeas petitions
 7 seeking to halt [the petitioners’] removal.” *Camarena v. Dir., Immigr. & Customs Enf’t*, 988 F.3d
 8 1268, 1272 (11th Cir. 2021). *Ketsoyan* was a challenge to both re-detention and removal.
 9 *Ketsoyan v. U.S. Dep’t of Just.*, No. 19-CV-1198, 2019 WL 4261881 (C.D. Cal. July 2, 2019).
 10 The court devoted little independent analysis to the re-detention claim, finding it foreclosed
 11 because the petitioner’s “fears that [his re-detention] may take place in the future” were
 12 speculative and “ambiguously-pled.” *Id.* at *4-5. Again, re-detention is not speculative here; it is
 13 ICE’s explicit plan. *Ketsoyan* is thus distinguishable, in addition to representing a minority
 14 position.

15 The government comes closer to analogous facts with its citation to *Tazu*, but still misses
 16 the mark. *See Opp.* at 9 (citing *Tazu v. Att’y Gen. United States*, 975 F.3d 292 (3d Cir. 2020)). As
 17 in *Ketsoyan*, the petitioner in *Tazu* challenged both re-detention and removal. The Third Circuit
 18 held that *Tazu*’s “challenge to his short re-detention” fell within § 1252(g)’s ambit because ICE
 19 had already secured a passport for *Tazu*’s removal and needed to detain him “for a few days” to
 20 effectuate removal. *Tazu*, 975 F.3d at 298 (holding that a “brief door-to-plane detention” was
 21 integral to executing the petitioner’s removal order). By contrast, the government concedes here
 22 that it has not even *requested* a travel document for Mr. Neou, nor has it offered any reason why
 23 it must re-detain Mr. Neou to pursue his removal. Dkt. No. 13-1, Declaration of Jennifer Ramirez
 24 ¶ 14; *see Kong*, 62 F.4th at 618 (distinguishing *Tazu* where re-detention “occurred before travel
 25 documents were secured”); *cf. Sun v. Noem*, No. 3:25-CV-02433-CAB-MMP, 2025 WL 2800037,
 26 at *2-3 (S.D. Cal. Sept. 30, 2025) (“*Thoth Sun*”) (enjoining re-detention where ICE made only
 27 “vague assertions” that it was “*preparing* to apply for the necessary documents to remove
 28 Petitioner to Cambodia,” and had not demonstrated that detention was necessary to pursue

1 removal). ICE's contemplated re-detention of Mr. Neou is far from a "brief door-to-plane"
2 detention of "a few days." *Tazu*, 975 F.3d at 298. Inapposite Third Circuit precedent is neither
3 binding nor persuasive.

4 Finally, 8 U.S.C. § 1252(b)(9), which the government briefly references, is likewise
5 inapplicable because it does not bar claims that are "independent of or collateral to the removal
6 process"—and surely not claims like Mr. Neou's that could not have been raised in a petition for
7 review. *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). The statute consolidates judicial
8 review of all questions "arising from any action taken or proceeding brought to remove" a
9 noncitizen into the petition-for-review process in the courts of appeals. *Id.* at 1031 (quoting 8
10 U.S.C. § 1252(b)(9)). Importantly, § 1252(b)(9) is a channeling provision, not a jurisdiction-
11 stripping provision, and both the Ninth Circuit and the Supreme Court have construed it to
12 preserve a noncitizen's "day in court." *Id.* (quoting *Singh v. Gonzales*, 499 F.3d 969, 979 (9th Cir.
13 2007)); *see also Jennings*, 583 U.S. at 293 (avoiding an interpretation of § 1252(b)(9) that would
14 render a noncitizen's claim "effectively unreviewable"). Where a noncitizen's claim "could not
15 have been raised before the agency because it arose after a final order of removal was entered
16 and, absent habeas review, [the noncitizen] would have had no legal avenue to obtain judicial
17 review," § 1252(b)(9) does not apply. *J.E.F.M.*, 837 F.3d at 1032 (citing *Singh*, 499 F.3d at 979).
18 Mr. Neou's due process claim arose long after his removal proceedings had concluded, and it
19 would be "absurd" to "cram[] judicial review" of that claim into the petition-for-review process.
20 *Jennings*, 583 U.S. at 293; *see also Ibarra-Perez*, 2025 WL 2461663, at *9 ("§ 1252(b)(9) does
21 not apply because Ibarra-Perez brings claims that arose after completion of his removal
22 proceedings."); *Ortega*, 2025 WL 2243616, at *4 (finding § 1252(b)(9) inapplicable); *Qian Sun*,
23 2025 WL 2730235, at *4 (same). The INA does not deprive Mr. Neou of his "day in court."
24 *Singh*, 499 F.3d at 979.

25 **II. The Government Fails to Undermine Mr. Neou's Likelihood of Success on the**
26 **Merits.**

27 ICE's attempt to re-detain Mr. Neou without a pre-deprivation hearing—thirteen years
28 after releasing him based on a finding that he was not a danger or a flight risk—offends the

1 Constitution. Pursuant to *Morrissey* and its progeny, numerous courts in this district have
 2 recognized that a noncitizen is owed due process before the government revokes their release.
 3 *Morrissey v. Brewer*, 408 U.S. 471 (1972); *see Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-
 4 05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) (collecting cases finding that
 5 noncitizens, like individuals on parole in *Morrissey*, have a liberty interest in remaining out of
 6 custody). The government fails to engage with, let alone distinguish, the abundance of decisions
 7 in this district and elsewhere recognizing that noncitizens released from ICE custody are entitled
 8 to a hearing *before* re-detention. *See infra* § II.A. Mr. Neou is no exception. This Court should
 9 reject the government’s invitation to depart from this consensus.

10 **A. The Government Fundamentally Misunderstands Mr. Neou’s Claim for Due**
 11 **Process Before Re-Detention.**

12 The government’s position on the merits has two basic defects. First, the fact that Mr.
 13 Neou is subject to detention under 8 U.S.C. § 1231(a), which does not provide for a pre-
 14 deprivation hearing, is beside the point. *See* Opp. at 10, 12-13. Mr. Neou’s claim is that the
 15 Constitution demands *more* than what the statute and regulations offer. The government’s
 16 contentions that the statute “authorizes” re-detention without pre-deprivation process, therefore,
 17 are irrelevant. *See* Opp. at 10, 12. Similarly, the government misses the point with its argument
 18 that the *Chhoeun* injunction “does not support Petitioner’s requested relief.” Opp. at 11. Indeed,
 19 Mr. Neou’s request for a pre-deprivation hearing goes beyond *Chhoeun*’s notice requirement, and
 20 that is why Mr. Neou seeks a preliminary injunction in this Court rather than enforcement of the
 21 *Chhoeun* injunction. *See, e.g., Thoth Sun*, 2025 WL 2800037 (enjoining re-detention of *Chhoeun*
 22 class member). Mr. Neou brings this action precisely because the statute, regulations, and
 23 *Chhoeun* injunction do not provide him all the process he is due.

24 Second, the government’s repeated suggestion that the Supreme Court has blessed re-
 25 detention under § 1231(a) without pre-deprivation process is wrong. *See, e.g.,* Opp. at 14
 26 (contending that “*Zadvydas* establishes that detention under Section 1231(a)(6) without any pre-
 27 or post-custodial bond hearing is constitutionally permissible”). In truth, the Supreme Court has
 28 never had the occasion to address the constitutionality of *re-detention* under § 1231(a), as

1 opposed to detention in the first instance. The petitioners in *Zadvydas* were already in custody
 2 and challenged their indefinite confinement, rather than the lack of a pre-detention hearing.
 3 *Zadvydas v. Davis*, 533 U.S. 678 (2001). The Supreme Court did not address what process is
 4 owed to *released* noncitizens when the government seeks to return them to custody.² And this
 5 distinction matters. Mr. Neou has much more to lose today than when ICE first detained him in
 6 2011: his children, his livelihood, and the community he has built since his release. *See Duong v.*
 7 *Kaiser*, --- F. Supp. 3d ---, No. 25-CV-07598-JST, 2025 WL 2689266, at *4 (N.D. Cal. Sept. 19,
 8 2025) (explaining that “a noncitizen at liberty has a greater interest in remaining free from
 9 detention than does a noncitizen who is currently or was recently detained”). *Zadvydas* does not
 10 speak to Mr. Neou’s situation, and neither do the other cases the government cites.

11 In the absence of squarely controlling precedent, district courts have looked to the
 12 analogous context of parole revocation for guidance. Where the Supreme Court *has* examined the
 13 liberty interests of individuals on conditional release was in *Morrissey*. 408 U.S. 471. In holding
 14 that a hearing before a neutral arbiter is required prior to revoking parole, the *Morrissey* Court
 15 explained that a parolee’s condition is “very different from that of confinement in a prison,” and
 16 termination of parole would inflict a “grievous loss on the parolee and often on others.” *Id.* at 482
 17 (internal quotation marks omitted). Since *Morrissey*, the Supreme Court has reaffirmed the basic
 18 principle that re-detention requires a pre-deprivation hearing. *Gagnon v. Scarpelli*, 411 U.S. 778,
 19 781-82 (1973) (probation); *Young v. Harper*, 520 U.S. 143, 144-45 (1997) (pre-parole
 20 supervision). As in *Morrissey*, Mr. Neou’s release enabled him to live productively in his
 21 community, to “be gainfully employed,” and to “be with family and friends.” *Morrissey*, 408 U.S.
 22 at 482. His liberty interest in living “a relatively normal life” only grew each year that he reported
 23 to ICE without incident. *Id.* Termination would inflict a “grievous loss” on not only Mr. Neou,
 24 but his three young children whom he has been raising as a single father. *Id.*; *see, e.g.*, Dkt. No. 1-

25 _____
 26 ² Because the due process implications of re-detention were not at issue in *Zadvydas*, the government’s
 27 reliance on the decision’s language that a noncitizen “may no doubt be returned to custody upon a
 28 violation” of release conditions is unavailing. Opp. at 5, 12. In any event, the government concedes that
 Mr. Neou has never violated his release conditions. *See* Opp. at 11 (the “government does not contest that
 Petitioner is part of the *Chhoeun* class,” which consists of Cambodian nationals who have not violated
 conditions of their release from ICE custody).

1 at 94 (noting Mr. Neou’s son’s autism and intellectual disability). Following the *Morrissey* line of cases, courts in this district and throughout California have found that noncitizens, like Mr. Neou, are entitled to pre-detention process. *See, e.g., Zakzouk v. Becerra*, No. 25-CV-06254-RFL, 2025 WL 2097470, at *4 (N.D. Cal. July 26, 2025); *Ortega*, 2025 WL 2243616, at *8; *Yang v. Kaiser*, No. 25-CV-06323-JD, 2025 WL 2792130, at *2 (N.D. Cal. July 30, 2025) (“*Zhiyu Yang*”); *Qian Sun*, 2025 WL 2730235, at *8; *Garcia*, 2025 WL 1927596, at *6; *Guillermo M. R. v. Kaiser*, --- F. Supp. 3d ---, No. 25-CV-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025); *Carballo v. Andrews*, No. 1:25-CV-00978-KES-EPG (HC), 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025).³

The government largely ignores this line of cases. It makes one reference to the authorities Mr. Neou cites, dismissing them as cases about ICE’s revocation of “bond issued under 8 U.S.C. § 1226(a).” Opp. at 10. Multiple courts *have* required pre-detention hearings for noncitizens subject to § 1231(a), but what is more, the government fails to explain why § 1231(a) is “materially different” from § 1226(a). *Id.* In fact, the two detention frameworks are not different in ways that are material to this case. *First*, § 1226(a) and § 1231(a)(6) are both discretionary detention statutes. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (noting that the government has the discretion to release individuals detained past the 90-day removal period under § 1231(a)(6)); *Pinchi*, 2025 WL 2084921, *1 (ordering a pre-deprivation hearing for an individual subject to § 1226(a) who was released by ICE). Just like a noncitizen who was detained under § 1226(a) and released in ICE’s discretion or on a bond set by an immigration judge, Mr. Neou was released based on a determination that he was not a danger or flight risk. *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 169 (W.D.N.Y. 2025) (“Noncitizens . . . who are released on orders of supervision under section 241.4 necessarily have been found not to constitute either a danger to the community or a flight risk.”); Dkt. No. 1-1 at 129-43. *Second*, § 1226(a)—like § 1231(a)—does not provide a pre-deprivation hearing, yet courts have still

³ The government identifies one case in its favor, but in that case the petitioners failed to “allege[] with sufficient particularity” the source of the due process right, or facts beyond “mere speculation” that ICE revoked their release under the challenged regulation. Opp. at 15 (citing *Moran v. U.S. Dep’t of Homeland Sec.*, No. ED CV 20-00696-DOC-JDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020)). Not so here, where Mr. Neou has articulated a liberty interest under *Morrissey* and his re-detention is not merely speculative.

1 imposed such a requirement as a matter of due process. Indeed, that Mr. Neou would be subject to
 2 § 1231(a), where a post-detention bond hearing is not promptly available as it is under § 1226(a),
 3 only *strengthens* his due process claim. *Third*, courts have found a due process right to a pre-
 4 deprivation hearing even for individuals subject to mandatory detention. *See, e.g., Duong*, 2025
 5 WL 2689266, at *5 (enjoining re-detention of a noncitizen subject to mandatory detention under §
 6 1226(c)); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *4
 7 (E.D. Cal. Aug. 21, 2025) (same under § 1225(b)).

8 As these cases illustrate, what a statute provides and what due process requires are
 9 separate issues. Courts have accordingly rejected the government’s arguments that due process
 10 turns on the particular detention statute at hand. *See Romero v. Kaiser*, No. 22-CV-02508-TSH,
 11 2022 WL 1606294, at *2 (N.D. Cal. May 20, 2022) (adopting the reasoning of another case
 12 requiring a pre-detention hearing, despite a difference in detention statutes); *Jorge M.F. v.*
 13 *Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (same). In short, the government offers
 14 the Court no cogent reason to part ways with the other courts in this district.

15 **B. The *Mathews v. Eldridge* Test Applies and Weighs Heavily in Mr. Neou’s**
 16 **Favor.**

17 This Court should employ the *Mathews* test to determine what process Mr. Neou is due.
 18 *Mathews v. Eldridge*, 424 U.S. 319 (1976). To be sure, the Ninth Circuit in *Rodriguez Diaz* left
 19 open the question of whether the *Mathews* test applies to constitutional challenges to immigration
 20 detention. *See Opp.* at 14 (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir.
 21 2022)). Notably, the court still proceeded with using the *Mathews* test after noting a long line of
 22 appellate precedent applying *Mathews* in the immigration context. *Rodriguez Diaz*, 53 F.4th at
 23 1206-10. Where the government has offered no alternative framework, and where virtually every
 24 court addressing a claim similar to Mr. Neou’s has employed *Mathews*, this Court should follow
 25 suit.

26 The government advances several arguments that the three *Mathews* factors “weigh
 27 decidedly against” Mr. Neou. *Opp.* at 17. None are persuasive. On the first *Mathews* factor, the
 28 government argues that Mr. Neou’s liberty interest is “reduced” due to his final order of removal.

1 Opp. at 15. However, even “individuals who face significant constraints on their liberty or over
 2 whose liberty the government wields significant discretion retain a protected interest in their
 3 liberty.” *Pinchi*, 2025 WL 2084921, at *3; *Zakzouk*, 2025 WL 2097470, at *3; *see also Hurd v.*
 4 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“[A] person who is in fact free of
 5 physical confinement—even if that freedom is lawfully revocable—has a liberty interest that
 6 entitles him to constitutional due process before he is re-incarcerated.”). Mr. Neou’s liberty
 7 interest has only grown over the course of the thirteen years that he has been free. *See Duong*,
 8 2025 WL 2689266, at *4; *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)
 9 (finding that “[g]iven the civil context, [the petitioner’s] liberty interest is arguably greater than
 10 the interest of parolees in *Morrissey*”). For the government to label Mr. Neou’s interest in
 11 continued liberty an “unreasonable expectation[]” defies common sense. Opp. at 15.

12 On the second *Mathews* factor, the government argues that the existing procedures are
 13 constitutionally sufficient, Opp. at 16, but the regulations allow for review far too late and place
 14 unchecked power in ICE’s hands. First, the criteria for revocation of release are so vague as to be
 15 meaningless. The regulations permit revocation if ICE believes “[t]he purposes of release have
 16 been served,” it is “appropriate to enforce a removal order,” or “any other circumstance” shows
 17 that “release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Mr. Neou faces a very high
 18 risk of an erroneous deprivation, where ICE may revoke release at any time for any reason despite
 19 substantial evidence that Mr. Neou does not pose a danger or a flight risk.

20 Next, contrary the government’s assertions, the post-order custody review (“POCR”)
 21 regulations are not adequate procedural protections because they do not provide for timely or
 22 neutral review. Opp. at 12-13, 16. The government notes that Mr. Neou would be eligible for
 23 review after three months, overlooking the damage that three months of unreviewed detention can
 24 inflict on a person and family. And to rely on the POCR process is to ask ICE—Mr. Neou’s
 25 jailer—to second-guess its own decision to detain him. In other words, the post-detention
 26 procedural safeguards do “essentially no more than [] request to ICE’s arresting agents or their
 27 supervisors at headquarters to reconsider the agency’s unilateral detention decision’ without any
 28 requirement that a neutral party review that decision.” *Qian Sun*, 2025 WL 2730235, at *6

(quoting *Guillermo M. R.*, 2025 WL 1983677, at *7). Grasping for case law approving of the regulations, the government advances a strained reading of Justice Sotomayor’s non-binding statement in a case about ICE’s unlawful removal of a man to El Salvador. Opp. at 13 (citing *Noem v. Abrego Garcia*, 145 S. Ct. 1017 (2025)). Justice Sotomayor noted the existence of 8 C.F.R. § 241.4(l) but in no way opined on its constitutionality—an issue that was not before the Supreme Court. *Abrego Garcia*, 145 S. Ct. at 1019. The regulations are simply “inappropriate to address the harm complained of here.” *Qian Sun*, 2025 WL 2730235, at *6. “[O]nly additional pre-detention process can protect against an erroneous deprivation” of Mr. Neou’s liberty interest. *Id.*

On the third *Mathews* factor, the government’s claimed interest in protecting the public from “dangerous criminal aliens” and ensuring their removal, Opp. at 17, avoids the relevant inquiry: “the government’s interest in re-arresting Petitioner-Plaintiff without a hearing.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025). Moreover, the government does not assert that Mr. Neou in particular is a danger to the community or flight risk. Nor could it credibly do so. Any administrative and resource burden on the government in providing a hearing pales in comparison to “the cost to the government of detaining [Mr. Neou]” pending a hearing, *Pinchi*, 2025 WL 2084921, at *6, not to mention the human cost to Mr. Neou. In addition, the government’s asserted interest in “prompt” removal, Opp. at 17, rings hollow where it waited *thirteen years* to re-arrest Mr. Neou—during which he has had a spotless record. *Mathews* requires a pre-detention hearing for Mr. Neou.

III. The Government Fails to Rebut Mr. Neou’s Particularized Showing on the Remaining Preliminary Injunction Factors.

The remaining equitable factors favor Mr. Neou, and the government’s arguments to the contrary are divorced from the factual record demonstrating the severe harm Mr. Neou and his family will suffer absent injunctive relief.

A. The Court Should Reject the Government’s Attempt to Trivialize the Harm Mr. Neou Faces.

The government’s claim that the injuries Mr. Neou faces are “speculative” strains

credulity. Opp. at 18. The record reflects, and the government does not dispute, that Mr. Neou is the sole caregiver for three children, one child has a disability and needs an Individualized Education Program at school and special attention at home, and no other relative can assume responsibility for the children in Mr. Neou's absence. Dkt. No. 1-1 at 67-68, 75, 94-119. Mr. Neou's re-detention is a possibility even with a pre-deprivation hearing, as the government says, but without this Court's intervention it is a certainty. Opp. at 18. And that re-detention, for any length of time, would surely have devastating consequences for his family.

B. A Pre-Deprivation Hearing for Mr. Neou Is Fair and in the Public Interest.

Re-detaining a person who has lived an upright life for the past thirteen years, without so much as a hearing, and leaving his children to the foster care system, does not serve the public interest. As explained, Mr. Neou's re-detention would cause him and his family "significant hardship." *Zakzouk*, 2025 WL 2097470, at *4. The "comparative harm" to ICE is "minimal"—a "mere short delay." *Id.* Particularly where the parties agree that Mr. Neou has complied with his order of supervision, *see* Opp. at 11 (agreeing that Mr. Neou fits the *Chhoeun* class definition, which requires compliance with conditions of release), there is simply "no urgent reason why [Mr. Neou] needs to be re-detained." *Zakzouk*, 2025 WL 2097470, at *4. The balance of equities tips sharply in Mr. Neou's favor, and the injunction he seeks is in the public interest.

CONCLUSION

Mr. Neou respectfully requests that the Court enjoin ICE from re-detaining him without first affording him a hearing before a neutral adjudicator at which ICE bears the burden of proof.

Dated: October 8, 2025

Respectfully submitted,

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5.1(i)(3)

As the filer of this document, I attest that the other signatory has concurred in its filing.

Executed on October 8, 2025 in San Francisco, California.

/s/ Jingni (Jenny) Zhao

Jingni (Jenny) Zhao