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7
8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 KAI LUN ZHENG,

11 Petitioner-Plaintiff,

12 v.

13 SERGIO ALBARRAN, *et al.*,

14 Respondents.¹

CASE NO. 1:25-CV-01685-DJC-CKD

OPPOSITION TO PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION

DATE: December 15, 2025

TIME: 11:00 a.m.

COURT: Hon. Daniel J. Calabretta

15
16 This Court should deny Petitioner's Motion for Preliminary Injunction because he does not meet
17 the heavy burden required to justify such relief. As discussed below, Immigration and Customs
18 Enforcement (ICE) lawfully exercised its discretion to revoke Petitioner's supervised release based on a
19 significant likelihood that Petitioner's removal will occur in the reasonably foreseeable future. ICE also
20 provided Petitioner with the required written notice on the same day ICE re-detained Petitioner, and also
21 on that date held the informal interview required by the regulations covering revocation of supervised
22 release. *See* 8 C.F.R. § 241.13(i). Moreover, Petitioner's reasonably foreseeable removal is to China, not
23 to a third country, and Petitioner does not contest his removability to China. Accordingly, Petitioner fails
24 to meet his burden, and the request for a preliminary injunction should be denied.

25
26 ¹ Respondents move to strike and to dismiss all improperly named officials. A petitioner seeking
27 habeas corpus relief may only name the officer having custody of him as the respondent to the petition.
28 28 U.S.C. § 2242; *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024) (holding, among other things,
that the warden of the private detention facility at which a non-citizen alien was held was the proper §
2241 respondent). In the instant case, Petitioner's custodian is the facility administrator at the Golden
State Annex, located in McFarland, California.

I. BACKGROUND

Petitioner is a citizen of the People's Republic of China and entered the United States in 1993. (Declaration of Deportation Officer Refugia Guerra ("Decl."), ¶ 5; Exhs. 1 and 2.) Petitioner has used different names and some documents refer to Petitioner as Kai Lun Zheng while other documents refer to Petitioner as Wai Keung Cheung. (Decl., ¶ 5.)

On June 8, 2009, Petitioner was convicted in the U.S. District Court for the Northern District of California, for conspiracy to possess with intent to distribute and to distribute MDMA, Class C Felony and Tax Evasion in violation of Title 21, United States Code, Sections 846, 841(b)(1)(C) and Title 26, United States Code, Section 7201. (Decl., ¶ 7; Exh. 4.) On June 4, 2020, an Immigration Judge ordered Petitioner removed, as he was not eligible for any relief from removal. (Decl., ¶ 8; Exh. 5.) Upon his release from federal criminal custody, ICE took Petitioner into custody. (Decl., ¶ 9.) On September 5, 2014, ICE released Petitioner on an Order of Supervision (OSUP). (Decl., ¶ 10; Exhs. 6 and 7.) On June 2, 2015, ICE again took Petitioner into custody and on August 17, 2015, ICE released Petitioner on an USOP, pending travel documentation to China. (Decl., ¶¶ 12-14.)

On October 15, 2025, ICE revoked Petitioner's supervised release based on changed circumstances because there is a significant likelihood of his removal in the reasonably foreseeable future. (Decl., ¶ 16; Exh. 10.) Also on October 15, 2025, ICE provided Petitioner the Notice of Revocation of Release, which explained that Petitioner's supervised release was revoked based on changed circumstances. (Exh. 10 at 1.) That same day, ICE held an informal interview with Petitioner pursuant to 8 C.F.R. § 241.13(i). (Decl., ¶ 16; Exh. 10 at 3.)

ICE has prepared the request for China to issue a travel document for Petitioner and forwarded the pack to ICE Enforcement and Removal Operations (ERO) headquarters for final approval. (Decl., ¶ 17.) As ICE explains in the attached Declaration, over the past year, China has been issuing travel documents and accepting returning Chinese deportees. (Decl., ¶ 18.)

Petitioner filed a petition for habeas corpus on December 1, 2025, in which he seeks declaratory and injunctive relief, including his release from immigration detention; a hearing before a neutral adjudicator before any re-detention; and constitutionally-compliant procedures before the government

1 seeks to remove Petitioner to any third country.² (ECF No. 1.) He concurrently filed a motion for a
 2 Temporary Restraining Order. (ECF No. 2.) On December 1, 2025, the Court converted Petitioner's
 3 Motion for a Temporary Restraining Order to a Motion for Preliminary Injunction and ordered
 4 Respondents to file their Opposition no later than December 8, 2025. (ECF No. 4.) The Court also ordered
 5 that Petitioner may file a reply no later than December 12, 2025. *Id.* Finally, the Court set the Motion for
 6 Preliminary Injunction for oral argument on December 15, 2025. *Id.*

7 **II. ARGUMENT**

8 **A. Legal Standard for Preliminary Injunction**

9 Preliminary injunctions are extraordinary remedies "never awarded as of right." *Winter v. Nat.*
 10 *Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). "[P]laintiffs seeking a preliminary
 11 injunction face a difficult task in proving that they are entitled to this extraordinary remedy." *Earth Island*
 12 *Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted). Petitioner's burden is aptly
 13 described as "heavy." *Id.* A preliminary injunction requires "substantial proof" and a "clear showing."
 14 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997).

15 "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
 16 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
 17 equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786 F.3d
 18 733, 740 (9th Cir. 2015). Alternatively, a plaintiff can show "serious questions going to the merits and the
 19 balance of hardships tips sharply towards [plaintiff], as long as the second and third ... factors are
 20 satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

21 **B. Petitioner is Unlikely to Succeed on the Merits**

22 **i. Petitioner Has Not Established that ICE Lacked Authority to Revoke** 23 **Petitioner's Release or to Detain Petitioner**

24 The Immigration and Nationality Act (INA) governs detention and release during and following
 25 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). When someone has
 26 received a final removal order, as Petitioner has, detention is mandatory for the following 90 days. 8

27 _____
 28 ² Petitioner's petition for habeas corpus also seeks reasonable costs and attorney fees, and such
 further relief as the court deems just and proper. (ECF No. 1.)

1 U.S.C. § 1231(a)(2). After that time, detention is within ICE's discretion under 8 U.S.C. § 1231(a)(6).
2 Such detainees have due process protection, and the Supreme Court has set forth the basic limitation by
3 clearly holding that a detainee can be detained "until it has been determined that there is no significant
4 likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).
5 The Supreme Court approximated this period to be six months, after which, if the detainee provides good
6 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,
7 the burden shifts to the government to respond with evidence sufficient to rebut that showing. *Id.* This
8 limitation is linked to the statute's "basic purpose," which is to "assur[e] the alien's presence at the
9 moment of removal." *Id.* at 699.

10 Applying this framework, Petitioner is unlikely to succeed on the merits. First, the INA authorizes
11 ICE to detain Petitioner as someone subject to a final removal order, to effectuate his removal. 8 U.S.C.
12 § 1231.

13 Second, contrary to Petitioner's claim that the government is in violation of the regulations
14 governing ICE's authority to revoke an Order of Supervision, 8 C.F.R. § 241.13(i), ICE is following those
15 regulatory requirements. The implementing regulations provide that ICE "may revoke an alien's release
16 under this section and return the alien to custody if, on account of changed circumstances, the Service
17 determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable
18 future." 8 C.F.R. § 241.13(i)(2). As discussed in the Notice of Revocation of Release, ICE revoked
19 Petitioner's release because it determined Petitioner's removal was likely to occur in the reasonably
20 foreseeable future. (Decl., ¶ 16; Exh. 10 at 1.) The Declaration of Deportation Officer Guerra also
21 discusses that "[t]here are no known impediments to obtaining a travel document for Petitioner at this
22 time" and that "[a]s of late, ICE has recently been able to obtain travel documents for Chinese nationals
23 and remove them to the People's Republic of China." (Decl., ¶ 18.) The declaration notes that recently
24 China has been issuing travel documents in 45-60 days, but sometimes sooner, and that ICE has been able
25 to effectuate removals to China. *Id.* Deportation Officer Guerra's December 4, 2025 declaration explained
26 that ICE has prepared the request for China to issue a travel document for Petitioner, and forwarded the
27 packet to ICE ERO headquarters for final approval. (Decl., ¶ 17.) Thus, the government has exercised its
28 discretion to re-detain Petitioner based on changed circumstances, and ICE is taking the necessary steps

1 to effectuate Petitioner's removal based on these changed circumstances.

2 While ICE is complying with the regulations and the procedural safeguards those regulations
3 establish, these regulations "do not create independent substantive rights that override the statutory grant
4 of detention authority." *Sanchez v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB Dkt. 8, 2025 U.S. Dist.
5 LEXIS 196639, at *7 (C.D. CA Oct. 3, 2025) (citing *Zadvydas*, 533 U.S. at 701 and *Jane Doe 1 v. Nielsen*,
6 357 F. Supp. 3d 972, 1000 (N.D. Cal. 2018) (concluding that agency rules must prescribe substantive law,
7 not merely procedural or policy guidance, to be enforceable)).

8 If the Court were to determine that some part of the regulations had not been followed in this case,
9 the appropriate remedy for any such procedural deficiency would not be automatic release from custody,
10 but rather to remedy the specific procedural deficiency that might be established. Injunctive relief must
11 be *narrowly tailored* to the wrong. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022)
12 ("And we note that even when there are deficiencies in individual § 1226(a) proceedings, they may be
13 redressable through means short of major changes to the burden of proof.").

14 Third, ICE is meeting its obligations under *Zadvydas* in that it has determined that Petitioner's
15 removal is significantly likely to occur in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701.
16 As part of its efforts to effectuate Petitioner's removal, ICE has prepared the request for a travel document,
17 which is pending with ICE headquarters for final approval. (Decl., ¶ 17). China has been issuing travel
18 documents requested by ICE generally within 45-60 days, though sometimes sooner. *Id.*

19 Petitioner cites to several recent decisions in other *habeas* petitions in which the district court
20 issued TROs, but those decisions are distinguishable from the instant case and the facts and evidence in
21 this case do not support the issuance of a preliminary injunction. As discussed above, here, Respondents
22 have provided Petitioner the required written notice and held an informal interview under 8 C.F.R. §
23 241.13(i)(3), and have explained the specific steps the government is taking to effectuate Petitioner's
24 removal and why there is a significant likelihood that his removal is reasonably foreseeable. Petitioner has
25 not met the required showing that there is not a significant likelihood of his removal in the reasonably
26 foreseeable future. *See also Lin v. Borgen*, No. 25-CV-05618 (MMG), 2025 WL 2158874, at *4 (S.D.N.Y.
27 July 30, 2025) (finding the court had no jurisdiction over a habeas corpus petition brought by a Chinese
28 national with a final removal order whose supervision had been revoked under 8 C.F.R. § 241.13, in part

1 because ICE had applied for a travel document to China and “all that remains” is for the Chinese Embassy
2 to issue the petitioner’s travel document).

3 **i. Petitioner has Not Established a Legally Required Basis for Review by a**
4 **Neutral Adjudicator Prior to Re-Detention**

5 Regarding Petitioner’s claim that he must receive a pre-detention hearing before a neutral
6 adjudicator, neither the INA nor the implementing regulations provides Petitioner with such a right. *See*
7 *generally* 8 U.S.C. § 1231(a)(6); 8 C.F.R. §§ 241.4, 241.13. A judicial ruling imposing such a requirement
8 would be at odds with the plain language of 8 C.F.R. § 241.13. It would essentially deprive ICE of its
9 operational discretion and regulatory authority to take such action, and ultimately improperly interfere
10 with the Executive Branch’s operations. *See Quoc Chi Hoac v. Becerra*, 2:25-cv-1740 DC, ECF No. 21,
11 p.5 (June 30, 2025); *see also Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022) (in the absence of
12 any such requirement in the text of section 1231(a)(6), detainee not entitled to a bond hearing before an
13 immigration judge). Nor does Due Process require this level of process.

14 Petitioner’s reliance on *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny is misplaced.
15 *Morrissey* arose from the due process requirement for a hearing for revocation of parole. *Id.* at 472–73. It
16 did not arise in the context of immigration. Moreover, in *Morrissey*, the Supreme Court reaffirmed that
17 “due process is flexible and calls for such procedural protections as the particular situation demands.” *Id.*
18 at 481. The “[c]onsideration of what procedures due process may require under any given set of
19 circumstances must begin with a determination of the precise nature of the government function.” *Id.* That
20 a process offered to people who are not citizens differs from that offered to U.S. citizens does not
21 inherently make it insufficient. *See Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976) (“The fact that an Act of
22 Congress treats aliens differently from citizens does not in itself imply that such disparate treatment is
23 invidious.”) (internal quotations omitted).

24 The procedural process provided to Petitioner is constitutionally adequate in the circumstances.
25 “Procedural due process imposes constraints on governmental decisions which deprive individuals of
26 ‘liberty’ or ‘property’ interests within the meaning of the [Fifth Amendment] Due Process Clause.”
27 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “The fundamental requirement of [procedural] due
28 process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333

1 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). To determine whether procedural protections
2 satisfy the Due Process Clause, courts consider three factors: (1) “the private interest that will be affected
3 by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures
4 used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
5 Government’s interest, including the function involved and the fiscal and administrative burdens that the
6 additional or substitute procedural requirement would entail.” *Id.* at 335.

7 Applying these factors to Petitioner weighs against adding a new pre-detention hearing
8 requirement into the INA. As to the first, while acknowledging the Petitioner has a strong liberty interest,
9 his liberty interest is lessened because he is subject to a final removal order. *See Diouf v. Napolitano*, 634
10 F.3d 1081, 1086–87 (9th Cir. 2011) (agreeing with the government that § 1231(a)(6) detainees have a
11 lesser liberty interest because they are closer to actual removal) (abrogated on other grounds); *see also*
12 *Mathews*, 426 U.S. at 79–80 (“In the exercise of its broad power over naturalization and immigration,
13 Congress regularly makes rules that would be unacceptable if applied to citizens.”).

14 The second *Mathews* factor also favors Respondents. Under the existing procedures, section
15 1231(a)(6) of the INA indisputably authorizes Petitioner’s detention to effectuate his final order of
16 removal. Petitioner is further afforded the procedural safeguards provided by regulations, including those
17 contained in 8 C.F.R. § 241.4 (such as requiring reasoned custody determinations and listing factors to be
18 considered in weighing detention or release) and § 241.13 (requiring ICE to conduct a review to determine
19 if there is a significant likelihood that the alien will be removed in the reasonably foreseeable future on
20 account of changed circumstances). Section 241.13 specifically allows a detainee to submit “any evidence
21 or information that he or she believes shows there is no significant likelihood he or she be removed in the
22 reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(3). Here, Petitioner did not provide information or
23 evidence during his informal interview that shows there is no significant likelihood that he will be removed
24 in the reasonably foreseeable future. *See* Exh. 10 at 4.

25 The final factor weighs heavily in favor of Respondents. The government has a strong interest in
26 effectuating a final removal order, particularly when the person subject to removal has a significant
27 criminal history. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). The achievement
28 of this objective warrants not placing additional fiscal and administrative hurdles through process that will

1 provide no additional safeguards. Petitioner's request for a pre-detention hearing essentially seeks a
2 judicially-created stay that would impede execution of a final removal order.

3 In considering all the factors discussed above, the Court should deny Petitioner's request for a pre-
4 detention hearing.

5 Petitioner's assertion that there is no significant likelihood of removal in the reasonably
6 foreseeable future falls short. Petitioner's reliance on prior, unsuccessful efforts to execute Petitioner's
7 removal order is overcome by the more recent removals to China, as discussed in the attached Declaration.

8 **ii. This Court Does Not Have Jurisdiction to Enjoin Removal to China**

9 To the extent the Motion for Preliminary Injunction seeks to prevent Petitioner's removal, this
10 Court lacks jurisdiction to do so. The INA explicitly provides that "no court shall have jurisdiction to hear
11 any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General
12 to commence proceedings, adjudicate cases, or *execute removal orders* against any alien under this
13 chapter." 8 U.S.C. § 1252(g) (emphasis added). This provision clearly prohibits district courts from
14 exercising injunctive relief to forestall removal via habeas cases. *See Rauda v. Jennings*, 55 F.4th 773 (9th
15 Cir. 2022) (holding that the district court could not enjoin removal via a habeas petition).

16 While this prohibition also extends to Petitioner's speculative assertion that he may be removed to
17 a third country, as demonstrated through the attached Declaration, ICE is taking steps to remove Petitioner
18 to China and is not currently seeking to remove Petitioner to a third country. Nevertheless, removal to a
19 third country is authorized by statute. *See* 8 U.S.C. § 1231(b)(2)(E).

20 Accordingly, Petitioner is unlikely to succeed on the merits in showing that his detention is
21 unlawful, that he must be afforded a pre-detention hearing before a neutral adjudicator, or that he is entitled
22 (or requires) injunctive relief preventing removal.

23 **C. Petitioner Does Not Establish Irreparable Harm**

24 Because Petitioner is unlikely to succeed on the merits of his petition, he likewise cannot establish
25 irreparable harm. As discussed above, ICE has exercised its statutory and regulatory authority to revoke
26 Petitioner's release and to detain him. In addition, Petitioner's detention satisfies Due Process and
27 *Zadvydas* because ICE has determined there is a significant likelihood that Petitioner's removal will occur
28 in the reasonably foreseeable future. Petitioner's detention is authorized by the statutes and regulations

discussed herein and his detention does not itself satisfy his burden of proving a likelihood of irreparable injury. While the Ninth Circuit has recognized that “[a]n alleged constitutional infringement will often alone constitute irreparable harm,” *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate “a sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a preliminary injunction.” *Assoc’d Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401, 1412 (9th Cir.1991)). As to any future, unspecified re-arrest or removal to a third country, Petitioner cannot establish irreparable harm because neither of those circumstances has materialized.

D. The Balance of Equities and the Public Interest Favors the Government.

It is well settled that the public interest in enforcement of the United States’s immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556–58 (1976); *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) (“The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.”) (citing cases); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (“There is always a public interest in prompt execution of removal orders[.]”). This public interest outweighs Petitioner’s private interest here.

III. CONCLUSION

Respondents respectfully request that the Court deny Petitioner’s *ex parte* Motion for Preliminary Injunction.

Dated: December 8, 2025

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