

1 Zachary Nightingale (California Bar # 184501)
Christine Raymond (Massachusetts Bar #711907)*
2 Van Der Hout LLP
3 360 Post Street, Suite 800
San Francisco, CA 94108
4 Telephone: (415) 981-3000
Fax: (415) 981-3003
5 Email: ndca@vblaw.com

6 **Admitted Pro Hac Vice*

7 *Attorneys for Petitioner-Plaintiff*
8 Kai Lun ZHENG (aka Wai Keung Cheung)

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 Kai Lun ZHENG,

12 Petitioner-Plaintiff,

13 v.

14 Sergio ALBARRAN, Acting Field Office
15 Director of San Francisco Office of Detention
and Removal, U.S. Immigrations and Customs
16 Enforcement; U.S. Department of Homeland
17 Security;

18 Todd M. LYONS, Acting Director, Immigration
and Customs Enforcement, U.S. Department of
19 Homeland Security;

20 Kristi NOEM, in her Official Capacity,
21 Secretary, U.S. Department of Homeland
22 Security;

23 Pam BONDI, in her Official Capacity, Attorney
General of the United States; and

24 Tonya ANDREWS, Facility Administrator at
25 Golden State Annex, McFarland, California;

26 Defendants.
27
28

Case No. 1:25-cv-01685-DJC-CKD

**PETITIONER-PLAINTIFF'S
TRAVERSE IN SUPPORT OF
PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

1 Respondents still do not have a travel document for Petitioner Mr. Zheng and have not
2 stated when they might obtain one from China, or if that will *ever* be possible for Mr. Zheng.
3 Dkt. 10, Respondent's Opposition; Dkt. 10-1, Declaration of Deportation Officer Refugia
4 Guerra; Dkt. 15 (incorporating all prior arguments previously made and evidence previously
5 presented). In fact, Respondents have not submitted *any* updated information or evidence in the
6 Return to the Petition for Writ of Habeas Corpus regarding the status of any travel documents,
7 or why Mr. Zheng was detained on October 15, 2025 in the first place. Dkt. 15. Instead,
8 Respondents merely state that: "The Court should deny Petitioner Kai Lun Zheng's application
9 for a writ of habeas corpus for the reasons states in Respondents' Opposition to Petitioner's
10 Motion for Preliminary Injunction." *Id.* Thus, Respondents reiterate the very same arguments
11 made previously, which this Court already rejected in granting the Preliminary Injunction in this
12 matter. Dkt. 13.

13 This Court previously ordered that, given his substantial liberty interest, due process
14 *requires* that Mr. Zheng be provided with a pre-deprivation hearing before the Court prior to
15 any future immigration detention. *Id.* Numerous other courts in this and other jurisdictions have
16 held the same for similarly situated individuals. *Lam v. Albarran*, No. 25-cv-09980-NW (N.D.
17 Cal. Dec. 23, 2025); *Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D. Cal.
18 July 16, 2025); *Phan v. Becerra*, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D. Cal. July
19 16, 2025); *Hoang v. Cruz*, No. EDCV 25-2766 JGB (JCx), 2025 LX 466860 (C.D. Cal. Oct. 28,
20 2025); *Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341 (E.D. Cal. Nov. 6,
21 2025); *Vo v. Noem*, 3:25-cv-03031-JO-SBC (S.D. Cal. Nov. 19, 2025); *Tran v. Noem*, No. 25-
22 cv-2391BTM-BLM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Nguyen v. Scott*, No. 2:25-
23 cv-01398, 2025 WL 2419288, (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d
24 144, 150 (D. Mass. June 20, 2025). Thus, this Court should issue an order on the merits of the
25 habeas petition that is consistent with the previous orders in this and other similar cases, and
26 find that Mr. Zheng must be provided with notice and a hearing before the Court prior to any
27 future re-detention where the U.S. Department of Homeland Security ("DHS") bears the burden

1 of demonstrating, and the Court must find, that his removal is reasonably foreseeable and
2 otherwise that circumstances have changed such that his re-detention would be warranted.

3 In addition, Mr. Zheng continues to take the position that the issue of third country
4 removal, without the provision of constitutionally-compliant procedures, is properly before this
5 Court. This Court has jurisdiction over Mr. Zheng's third country removal claim because, as the
6 Ninth Circuit has held, Respondents cannot be insulated from judicial review over "any post-
7 hearing decision by ICE to remove noncitizens to third countries where they would be in danger
8 of persecution, torture, and even death." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th
9 Cir. 2025) (finding that jurisdiction is not foreclosed by 8 U.S.C. § 1252(g)); *Qian Sun v.*
10 *Ernesto Santacruz Jr., et al.*, 5:25-cv-02198-JLS-AYP (C.D. Cal. Mar. 13, 2026) (granting
11 habeas petition ordering, among other things, that "Respondents...are permanently enjoined and
12 restrained from...(b) removing Petitioner to a third country unless they adhere to the following
13 procedures: i. provide Petitioner and her counsel with written notice in a language Petitioner can
14 understand; ii. provide a meaningful opportunity, and a minimum of ten (10) days, to raise a
15 fear-based claim for protection prior to removal; iii. if Petitioner demonstrates reasonable fear
16 of removal to the third country, Respondents must move to reopen Petitioner's removal
17 proceedings; and iv. If Petitioner is not found to have demonstrated a reasonable fear of removal
18 to the third country, Respondents must provide a meaningful opportunity, and a minimum of
19 fifteen (15) days for Petitioner to seek reopening of her immigration proceedings.").

20 Mr. Zheng's fear that he may be removed, without notice or process, to a third country
21 apart from China is not speculative. In fact, third country removals—*without notice*—are the
22 current policy of DHS. Mr. Zheng has already provided this Court with a copy of this policy,
23 along with an internal ICE memorandum, dated July 9, 2025, which further confirms that
24 officers are instructed to follow the March 30, 2025 policy memorandum. Dkt. 1-2 Exhs. D.-E.

25 Not only does this DHS policy exist, but the government is actively following this policy
26 and has removed other detainees with either no, or virtually no, notice. Individuals have found
27 themselves unlawfully deported to third countries such as El Salvador, Panama South Sudan, or

1 Eswatini—a reality that is surely not speculative.¹ Some individuals who have been sent to third
 2 countries have already faced torture and, for others, their attorneys have been unable to confirm
 3 that they are alive.² Even if Respondents have not indicated that they seek to specifically
 4 remove Mr. Zheng to a third country at this time, that they are actively following their policy of
 5 third country removal is explicit and real. Thus, Mr. Zheng’s fear of being removed to a third
 6 country without due process is a real and immediate threat of future injury jeopardizing his life
 7 and safety, and depriving him of his constitutional rights.³

8 Moreover, the third-country removal policy is not limited to situations where removal to
 9 the country stated in the removal order is not possible, as illustrated, for example, by the reports
 10 that a citizen of Mexico was sent to South Sudan.⁴ Respondents are engaged in a policy of

11 ¹ NPR, “U.S. deports hundreds of Venezuelans to El Salvador, despite court order” (Mar. 16, 2025),
 12 available at: <https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump>; AP, “Panama
 13 releases dozens of detained deportees from US into limbo following human rights criticism” (Mar. 9, 2025),
 14 available at: <https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5>; The New York Times, “Trump Administration Poised
 15 to Ramp Up Deportations to Distant Countries” (July 13, 2025), available at:
 16 <https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html>; Politico,
 17 “Trump launches next round of third country deportations with new flight to Eswatini” (July 16, 2025),
 18 available at: <https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757> (“The Trump administration deported five migrants from Vietnam, Jamaica, Laos, Cuba and
 19 Yemen to the small Southern African nation of Eswatini....”); Associated Press, “Men deported by US to
 20 Eswatini in Africa will be held in solitary confinement for undetermined time” (July 18, 2025), available
 21 at: <https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbcbfe6caff87d0bb8>; The Intercept, “State Dept: Trump’s ‘Third Countries’ for
 22 Immigrants Have Awful Human Rights Records” (July 29, 2025), available at:
 23 <https://theintercept.com/2025/07/29/trump-deport-immigrants-third-country-human-rights/>.

24 ² The Guardian, “Venezuelans deported by Trump are victims of ‘torture’, lawyers allege” (May 16, 2025),
 25 available at: <https://www.theguardian.com/us-news/2025/may/16/venezuelans-deported-trump-lawyers-torture> (“Lawyers hired by Venezuela have been unable to confirm ‘proof of life’ for 252 migrants
 26 imprisoned in El Salvador.”); NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison”
 27 (July 3, 2025), available at: <https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

28 ³ It gets worse. Human Rights experts from the United Nations have already expressed that the
 government’s own explicit policy is not compliant with the United States’s obligations under international
 law. See United Nations, “UN experts alarmed by resumption of US deportations to third countries, warn
 authorities to assess risks of torture” (July 8, 2025), available at: <https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn>.

⁴ The Guardian, “US border czar says he doesn’t know fate of eight men deported to South Sudan” (July
 11, 2025), available at: <https://www.theguardian.com/us-news/2025/jul/11/trump-immigration-tom-homan-south-sudan-deportees>.

1 effectuating removal however they determine they want to do so, and are proudly broadcasting
2 to the world their ability to do so. DHS itself has publicly announced that it has the “undisputed
3 authority to deport criminal illegal aliens—who are not wanted in their home country—to third
4 countries that have agreed to accept them.”⁵ Such third country removal could be arranged by
5 Respondents at any time, with no notice required—so the lack of a plan today indicates nothing
6 about the possibility of an active removal tomorrow.

7 Courts have already determined that due process challenges to the third-country removal
8 policy are viable because the DHS policy exists and is being executed, resulting in the
9 deportation of noncitizens to third countries with little or no notice in violation of the Due
10 Process Clause. *Qian Sun v. Ernesto Santacruz Jr., et al.*, 5:25-cv-02198-JLS-AYP (C.D. Cal.
11 Mar. 13, 2026); *Vu*, 2025 WL 3114341, at *9 (E.D. Cal. Nov. 6, 2025). That is because the
12 policy is carried out absent proper notice, through last-minute orders of removal, and through
13 the failure to notify individuals of their due process rights and rights under the Convention
14 Against Torture. *Id.*; see e.g., *Nguyen v. Scott*, 2025 WL 2419288, at *18-23; *Zakzouk v.*
15 *Becerra*, No. 25-CV-06254-KAW, 2025 WL 2899220, at *4 (N.D. Cal. Oct. 10,
16 2025); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 2987766, at *2-3 (W.D. Wash. Oct.
17 23, 2025). Accordingly, the existence of the policy and the unconstitutional manner in which it
18 is carried out support that Mr. Zheng’s concerns are not speculative, but rather a real threatened
19 injury, and the Court therefore has jurisdiction over this claim.

20 Finally, to vitiate a third-country removal claim, it is not sufficient for Respondents to
21 merely note that there is no plan to remove Mr. Zheng to a third country. *Vu*, 2025 WL
22 3114341, at *8 (where ICE has offered “no argument in response” to the petitioner’s third-
23 country argument and ICE “do[es] not state whether they are attempting or will attempt to
24

25 ⁵ DHS, “DHS Releases Statement on Major Victory for Trump Administration and the American People
26 on Deporting Criminal Illegal Aliens to Third Countries” (June 23, 2025), available at:
27 [https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-](https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people)
28 [american-people](https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people); CBS News, “Supreme Court lets Trump administration resume deportations to third
countries without notice for now” (June 24, 2025), available at: [https://www.cbsnews.com/news/supreme-](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/)
[court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/).

1 remove petitioner to a country other than Vietnam [t]hat silence is telling.”).

2 For all the above reasons, Mr. Zheng’s fear of being summarily removed to a third
3 country—without first being provided with notice or any constitutionally-compliant
4 procedures—is not speculative, but is grounded in the reality that many other detainees are
5 already experiencing, and is unconstitutional. Therefore, intervention by this Court is necessary
6 to protect Mr. Zheng’s due process rights, and this Court should thus order that Mr. Zheng
7 cannot be removed to any third country without first being provided with constitutionally-
8 compliant procedures by DHS, including but not limited to:

- 9 1. Written notice to Petitioner and counsel of the third country to which he may be
10 removed, in a language that Petitioner can understand, provided at least 21 days
11 before any such removal;
- 12 2. A meaningful opportunity for Petitioner to raise a fear of return for eligibility for
13 protection under the Convention Against Torture, including a reasonable fear
14 interview before a DHS officer;
- 15 3. If Petitioner demonstrates a reasonable fear during the interview, DHS must
16 move to reopen his underlying removal proceedings so that he may apply for
17 relief under the Convention Against Torture;
- 18 4. If it is found that Petitioner does not demonstrate a reasonable fear during the
19 interview, a meaningful opportunity, and a minimum of 15 days, for Petitioner to
20 seek to move to reopen his underlying removal proceedings to challenge
21 potential third-country removal.

22 For all of these reasons, this Court should grant the requested habeas relief.
23

24 Dated: March 13, 2026

Respectfully submitted,

25 /s/ Christine Raymond

26 Christine Raymond

27 Zachary Nightingale

Attorneys for Petitioner-Plaintiff

28 *Zheng v. Albarran, et al.*, No. 1:25-cv-01685-DJC-CKD

PETITIONER-PLAINTIFF’S REPLY ISO MOTION FOR PRELIMINARY INJUNCTION