

1 ROGER H. PONCE
2 PONCE LAW CORP
3 1424 17th St.
4 Bakersfield, CA 93301

5 Attorney for Petitioner

6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 KONG MENG VUE,

9 Petitioner,

10 v.

11 WARDEN OF GOLDEN STATE ANNEX
12 DETENTION FACILITY, *et al.*,

13 Respondents.
14

CASE NO. 1:25-CV-01713-JDP

PETITIONER'S REPLY IN SUPPORT OF
EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER

15
16 **I. INTRODUCTION**

17 Respondents' opposition does not address the central constitutional issue presented: Petitioner
18 has been re-detained after more than twenty years of liberty without receiving a neutral custody
19 determination.

20 Instead, Respondents argue that the motion is untimely and that detention under six months is
21 presumptively reasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001). Neither argument resolves the
22 due-process defect.

23 This case is not a stopwatch case. It is a process case. And Respondents do not dispute that no
24 neutral custody hearing has occurred.

25 **II. THE MOTION IS NOT UNTIMELY**

26 Local Rule 231(b) permits denial where a party delays seeking emergency relief in a way that
27 contradicts irreparable injury.

28 Here, Petitioner filed his TRO request contemporaneously with his opposition to Respondents'

1 motion to dismiss, after the Government formally took the position that detention “restarted” and would
2 continue without a hearing. The request was triggered by the Government’s litigation posture.

3 Unlike the petitioner in *Nersisyan*, Petitioner here did not wait months while asserting
4 emergency. Rather, he sought interim relief once the Government confirmed that no neutral custody
5 hearing would be provided and that detention would persist during litigation.

6 There has been no undue delay.

7 **III. THIS IS NOT A ZADVYDAS STOPWATCH CASE**

8 Respondents rely exclusively on *Zadvydas*’s six-month presumption. But *Zadvydas* addressed
9 continuous post-order detention—not re-detention after decades of liberty under supervision.

10 Petitioner lived at liberty under ICE supervision for over twenty years. Re-detention after such
11 prolonged liberty is constitutionally atypical and demands individualized justification.

12 Respondents do not argue that:

- 13 • Petitioner violated supervision conditions;
14 • A neutral decision-maker found him dangerous or a flight risk;
15 • A bond hearing has been provided;
16 • A custody hearing is forthcoming.

17 They instead argue that detention is lawful because fewer than six months have elapsed.

18 But constitutional reasonableness is not determined solely by duration. As the Supreme Court
19 held, detention must bear a reasonable relation to its purpose. *Zadvydas*, 533 U.S. at 690.

20 Here, the absence of process—not merely the passage of time—renders detention
21 constitutionally suspect.

22 **IV. DUE PROCESS REQUIRES A NEUTRAL CUSTODY DETERMINATION**

23 When civil detention becomes prolonged or atypical, due process requires a neutral hearing at
24 which the Government bears the burden. *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011).

25 Respondents do not dispute that no such hearing has occurred.

26 ICE’s internal custody review is not a substitute for neutral adjudication. The Due Process
27 Clause protects against executive-only detention decisions.

Under *Mathews v. Eldridge*, 424 U.S. 319 (1976):

- The private interest—freedom from physical restraint—is fundamental.
- The risk of erroneous deprivation is substantial without a hearing.
- The Government’s burden to provide a hearing is minimal.

Respondents do not engage this balancing at all.

V. PETITIONER SATISFIES THE STANDARD FOR INTERIM RELIEF

Petitioner has demonstrated serious questions going to the merits of his due-process claim. Continued detention without a neutral custody determination constitutes irreparable harm. The balance of equities favors Petitioner, who lived under supervision for decades without incident. If the Court declines to order immediate release, it should at minimum require a prompt custody hearing before a neutral decision-maker.

VI. CONCLUSION

Respondents’ opposition confirms the constitutional deficiency: Petitioner remains detained without a neutral custody determination after more than two decades of liberty.

Petitioner respectfully requests that the Court:

1. Grant his motion for temporary restraining order and order his release under appropriate supervision;
2. Or, in the alternative, order a prompt neutral custody hearing;
3. And grant such further relief as the Court deems proper.

DATED: February 4, 2026

Respectfully submitted,

By: /s/ Roger H. Ponce
ROGER H. PONCE
Counsel for Petitioner