UNITED STATES DISTRICT COURT
Eastern District of New York
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SHUO WANG,

Petitioner,

v.

Kenneth Genalo, in his official capacity as Director of U.S. Immigration and Customs Enforcement and Removal Operations New York City Field Office; Kristi NOEM, in her official capacity as Secretary of Homeland Security; and Pamela BONDI, in her official capacity as Attorney General of the United States.

Case No.

Respondents.

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PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF HIS EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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PRELIMINARY STATEMENT

Shuo Wang is a 26-year-old citizen of the People's Republic of China from Yingshan County, Hubei Province, who was detained and released on his own recognizance into the United States on or about August 28, 2023. Shuo did not finish his high school in China due to his poor family conditions in a rural area and his parents' poor health conditions, [redacted] [redacted] After studying at Henan Medical Technician College for one year in 2017, he worked at a restaurant for one year in 2018. From 2019, he worked at Mingliang Glasses Store in Yulong Town, Xingyang City, Henan Province, until coming to the United States (except during COVID lockdowns). On November 26, 2025, Shuo was forcibly arrested by the Department of Homeland Security (DHS) during a routine check-in at 26 Federal Plaza in Manhattan as part of a broader campaign by Respondents to detain individuals who have been in the United States for less than two years at the time they report to ICE. Notwithstanding the fact that Shuo had timely filed an application for asylum and the Immigration Judge had scheduled a subsequent hearing for Shuo, immediately after reporting to ICE, Shuo was encircled by DHS agents without explanation and detained. He was subsequently subjected to isolation in the Metropolitan Detention Center (MDC) Brooklyn, where conditions for ICE detainees are notoriously inhumane and barbaric, including chronic understaffing, frequent lockdowns, violence, medical neglect, extreme temperatures, and maggot-infested food, as decried by federal judges, elected officials, and advocates who have called for an end to ICE detention there amid lawsuits and protests alleging dangers that have led to multiple inmate deaths.

There have not been—nor have Respondents alleged any—changes in either Shuo's immigration case or his personal situation since Shuo was initially released from detention on his own recognizance upon his entry into the United States. Shuo has, and continues to, pursue his

asylum claim through proceedings before an immigration judge pursuant to Section 240 of the Immigration and Nationality Act. Moreover, there have been no changed circumstances supporting a finding that Shuo is a flight risk or danger to the community that could justify his detention. Since entering the United States, Shuo has worked hard to support himself and his family, including his mother in poor health conditions and his younger brother in college in China, employed as a cleaner at Newbody Spa in Brooklyn since obtaining employment authorization based on his timely filed asylum application; he has always been helpful and generous to others, especially seniors whom he assisted extensively, and many people miss him very much as a valuable asset to the community. Before his detention, he had been contacting his mother ten thousand miles away in China, who has been in poor health conditions since the passing away of his father and always comforted her with his improved life opportunities in the United States; now her health conditions have aggravated seriously due to worrying about her son's situations from lack of communications with her son and the widespread media coverage of the death of Chinese ICE detainee Chaofeng Ge in Pennsylvania. As such, Shuo petitions this court for his immediate release, as his detention violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act.

STATEMENT OF FACTS

Shuo Wang is a 26-year-old citizen of the People's Republic of China from Yingshan County, Hubei Province. See Emergency Petition for Writ of Habeas Corpus, dated December 20, 2025 (hereinafter Pet.), ¶¶ 12-13. Shuo did not finish his high school in China due to his poor family conditions in a rural area and his parents' poor health conditions, [redacted] [redacted] After studying at Henan Medical Technician College for one year in 2017, he worked at a restaurant for one year in 2018. From 2019, he worked at Mingliang Glasses Store

in Yulong Town, Xingyang City, Henan Province, until coming to the United States (except during COVID lockdowns). Pet. ¶ 13. Shuo was released on his own recognizance into the United States on or about August 28, 2023, after entering without inspection near San Ysidro, California, and being apprehended by Border Patrol. *See id.* The U.S. Department of Homeland Security (DHS) issued him a Notice to Appear (NTA) on or about August 28, 2023, placing him in removal proceedings under section 240 of the Immigration and Nationality Act. *Id.* His case was docketed with the Executive Office of Immigration Review (EOIR) at the Elizabeth, New Jersey Immigration Court shortly thereafter. *Id.* On or about December 10, 2025, Shuo filed a timely pro se application for asylum with the Immigration Court, detailing his fear of removal to China due to his opposition to the Chinese Communist Party's COVID-19 policies, his unlawful detentions in China, and his efforts to seek justice for his father's death. Pet. ¶¶ 15, 23.

Since entering the United States, Shuo has worked hard to support himself and his family, including his mother in poor health conditions and his younger brother in college in China, employed as a cleaner at Newbody Spa in Brooklyn since obtaining employment authorization based on his timely filed asylum application. Pet. ¶ 16. He has always been helpful and generous to others, especially seniors whom he assisted extensively, and many people miss him very much as a valuable asset to the community. Pet. ¶ 17. Shuo is a devoted and engaged son and brother to his family. Prior to his detention, Shuo had been contacting his mother ten thousand miles away in China, who has been in poor health conditions since the passing away of his father, and always comforted her with his improved life opportunities in the United States; now her health conditions have aggravated seriously due to worrying about her son's situations from lack of communications with her son and the widespread media coverage of the death of Chinese ICE detainee Chaofeng Ge in Pennsylvania. Pet. ¶ 18. Shuo gains great satisfaction from helping others and hopes to

incorporate charitable acts into his adult life. Pet. ¶ 19. He resided at [redacted], before his detention. *Id.*

On November 26, 2025, Shuo appeared pro se for a routine check-in at 26 Federal Plaza in Manhattan. Pet. ¶¶ 20-22. Upon information and belief, during or immediately after the check-in, DHS decided to detain Shuo as part of a larger campaign to detain individuals in the United States for less than two years. *See id.* Shuo explained to ICE officials that he had timely filed an application for asylum and an Immigration Judge had scheduled a subsequent hearing for him. Pet. ¶ 21. Notwithstanding this, immediately after reporting, Shuo was encircled by DHS agents without explanation and detained. Pet. ¶ 22. When Shuo was detained, the ICE agents did not inform him why they were detaining him, nor did they present a warrant. See id. Shuo did not resist arrest. See id. Upon information and belief, aside from the November 26, 2025, apprehension by ICE, and his initial detention at the border pending his release on recognizance, Shuo has not had any contact with law enforcement since entering the United States. See id. In his home country of China, however, Shuo was unlawfully detained during the COVID-19 lockdown in February 2020 when he attempted to leave his home to purchase life-saving anti-rejection medication for his father, who suffered from chronic kidney disease and uremia; police officers intercepted him at the village entrance, pinned him to the ground, and held him in detention at the village government office for several days despite his explanations. He was released on March 5, 2020, after his father's death on February 28, 2020, but was prevented from attending the funeral. In early 2023, when Shuo sought accountability and compensation for his father's death through the Yingshan County Public Security Bureau, he was again detained by three officers on February 12, 2023, on accusations of "disrupting social order," during which he was punched in the chest and abdomen causing severe injury. He was released the next day only after his mother paid a 5,000

RMB fine, and he was threatened with further arrest if he continued to petition for justice. These prior experiences in China underscore Shuo's well-founded fear of persecution and the absence of any criminal record or unlawful behavior on his part that would justify his current detention in the United States. Pet. ¶ 23.

After his arrest, Shuo was held in isolation at the Metropolitan Detention Center (MDC) Brooklyn, where conditions for ICE detainees are notoriously inhumane and barbaric, including chronic understaffing, frequent lockdowns, violence, medical neglect, extreme temperatures, and maggot-infested food, as decried by federal judges, elected officials, and advocates who have called for an end to ICE detention there amid lawsuits and protests alleging dangers that have led to multiple inmate deaths. Pet. ¶ 26. Shuo's family endured hours of panic and desperation, not knowing where Shuo was after his detention. Pet. ¶¶ 24-25. On December 20, 2025, through counsel, Shuo files this emergency petition for habeas corpus while he is detained at Brooklyn MDC in Brooklyn, New York. Pet. ¶ 28.

Shuo's Immigration Court case is venued before the Elizabeth, New Jersey Immigration Court, with a next hearing unscheduled. Pet. ¶¶ 29-30. Shuo is ineligible for bond before the Immigration Court pursuant to the holding in *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025), because Shuo had been detained upon his entry into the United States and placed into removal proceedings as an arriving alien who entered without inspection, he was ineligible for bond. *See id.* Shuo now respectfully requests that this Court order his immediate release as his detention—without any individualized showing of changed circumstances supporting a finding that he is a flight risk or danger to the community—violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act.

ARGUMENT

I. SHUO'S ARREST AND DETENTION VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

Shuo's arrest and detention violates his substantive and procedural due process rights. "Freedom from imprisonment—from government custody, detention, or other physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens unquestionably have a substantive liberty interest to be free from detention. *See id.* "Case after case instructs us that in this country liberty is the norm and detention 'is the carefully limited exception.'" *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (quoting *U.S. v. Salerno*, 481 U.S. 739, 755 (1987)). Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," there exist strict limits on the government's ability to imprison people as a preventative measure. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *Salerno*, 481 U.S. at 755). Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690.

As Shuo's detention violates both his substantive and procedural right to due process, his immediate release is required. *See Valdez v. Joyce*, 25-cv-04627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (ordering the release of an individual detained at an immigration courthouse based on due-process violations); *Lopez v. Sessions*, 18-cv-4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018) (finding due process violation where petitioner was re-detained with no "deliberative process prior to, or contemporaneous with, the decision" to re-detain).

A. Shuo's Detention Violates His Right to Substantive Due Process Because Shuo is Neither a Flight Risk Nor a Danger to the Community.

While civil immigration detention is authorized by statute, that authorization does not free immigration detention from the constricts of the Constitution. *See Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024); *Velasco Lopez*, 978 F.3d at 850; *Zadvydas*, 533 U.S. at 690. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 853-54; *Faure v. Decker*, 15-cv-5128 (JGK), 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2015) (ordering release or bond hearing where there was "no evidence" that the habeas petitioner "poses a danger to the public or would flee during the pendency of the removal proceedings"). In the absence of any evidence for either of those purposes, detention violates the substantive due process right to be free from purposeless confinement. *See Valdez,* 2025 WL 1707737, at *3 (ordering release where petitioner had no criminal history and DHS could not articulate a change of circumstances that would make petitioner a flight risk); *Mahdawi v. Trump*, 25-cv-389 (GWC), 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him") (emphasis in original); *see also Martinez v. McAleenan*, 19-cv-2627 (NSR), 385 F. Supp. 3d 349, 368 (S.D.N.Y. 2019) (finding that a four-month confinement following a defective notice of reinstatement, cured only after petitioner filed an order to show cause in a habeas case, violated his right to substantive due process.). As there is no evidence that Shuo's detention serves either purpose, his continued detention violates his substantive due process rights.

Respondents presumably found that Shuo posed no risk of flight or danger when they released him, on his own recognizance, in California after being held in detention for one day. 8 C.F.R. § 1235.1(c)(8) (permitting release by DHS only "if [the noncitizen] demonstrates to the satisfaction of the officer that such release would not pose a danger to property or persons, and

that the alien is likely to appear for any future proceeding"); see also *Saravia v. Sessions*, 17-cv-3615 (VC), 280 F.Supp.3d 1168, 1179 (N.D. Cal 2017), aff'd sub. nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Nothing has occurred to alter that determination, nor have Respondents offered any individualized proof that the circumstances have changed. On the contrary, Shuo has followed all of the procedures and requirements of the immigration system, including attending his immigration hearing, submitting a timely application for asylum and reporting to ICE check-ins.

Since that time, he has also established and deepened ties in his community in New York. Shuo has been working diligently as a cleaner at Newbody Spa in Brooklyn since obtaining employment authorization based on his timely filed asylum application, where he has built strong relationships with colleagues and clients through his reliable and hardworking nature. He was determined to learn English and improve his skills to better integrate and succeed in his new life, with aspirations to provide long-term stability for his family. Additionally, Shuo has been an active supporter of his family in China, regularly sending financial assistance to his mother, who suffers from poor health following his father's death, and his younger brother attending college, demonstrating his commitment to family responsibilities despite the distance. Shuo is a selfless young man who not only supports his family but also provides acts of service in the Brooklyn community by assisting seniors with daily tasks and offering help to those in need, making him a valued and missed member of the neighborhood where many rely on his generosity and kindness.

In the absence of any reason to redetermine the earlier assessment that Shuo poses a flight risk or a danger, his detention lacks any connection to either purpose that may justify immigration detention, which renders it unlawful. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government interests in preventing flight and danger). As

such, Shuo seeks his immediate release.

A. Shuo's Arrest and Detention Without the Opportunity to Seek Release Violates His Right to Procedural Due Process.

Shuo's summary arrest and detention without any affirmative showing by Respondents of changed circumstances also violates his procedural due process rights. A person's liberty also cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. "Procedural due process rules are meant to protect against the mistaken or unjustified deprivation of life, liberty, or property." *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 137 (2025) (cleaned up). The three-factor test articulated in *Mathews v. Eldrige*, 424 U.S. 319 (1976), provides the relevant framework "to determine what process is due to noncitizens in removal proceedings." *Black*, 103 F.4th at 147 (collecting cases); *see also Velasco Lopez*, 978 F.3d at 851. The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of any additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. These factors, taken together, establish that Shuo's sudden detention, without a hearing or presentation of any changed circumstances, violated his procedural due process rights.

As to the first prong, Shuo invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). His interest is no less because he was subject to a form of conditional release. The liberty interest in even conditional release is well established in the context of parole and probation. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v.*

Scarpelli, 411 U.S. 778, 782 (1973). Noncitizens also have a liberty interest in continued freedom from civil immigration confinement. *See, e.g.*, *Valdez*, 2025 WL 1707737, at *3; *Lopez*, 2018 WL 2932726, at *12 ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment."); *Ortega v. Bonnar*, 18-cv-3228 (WHO), 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying *Morrisey* and *Gagnon* to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody"); *Meza v. Bonnar*, No. 18-cv-02708 (BLF), 2018 WL 2554572, at *3 (N.D. Cal. June 4, 2018) (finding petitioner likely to succeed in her claim that she had a "vested interest" in her continued release from immigration detention and noting "due process would seem to require an administrative hearing to show a material change in circumstances" prior to re-detention).

The liberty interest is heightened here by the fact that Shuo was previously released. As another district court explained in a class-action case challenging re-detention by ICE, the liberty interest when a person is re-detained in the community is "not the same as when someone is caught coming across the border and detained in the nearest facility." *Saravia*, 280 F.Supp.3d at 1196, *aff'd sub. nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). It is instead greater, because petitioners like Shuo are "taken away from their families, their schools, and their communities, often to be shipped across the country to a high security institution and held for an indefinite period." *Id.*

Next, the risk of erroneous deprivation is enormous. *Black*, 103 F.4th at 152 (for the second prong of *Mathews* "[t]he only interest to be considered…is that of the detained individuals—not the government"). On information and belief, Respondents did not conduct any individualized custody assessment before re-detaining Shuo and acted only on the basis of a nationwide plan. *Cf.*

Lopez, 2018 WL 2932726, at *12 (finding a due process violation when the petitioner was re-detained by immigration authorities with no "deliberative process"). As a result of this lack of process, Shuo is erroneously detained, insofar as he poses neither a danger nor a flight risk.

II. SHUO'S DETENTION PURSUANT TO A COURTHOUSE ARREST POLICY VIOLATES THE ADMINISTRATIVE PROCEDURE ACT.

In May 2025, Respondents began an indiscriminate campaign of arrests at immigration courthouses and routine check-ins targeting individuals who have been in the United States for less than two years, which continued and led to Shuo being suddenly detained as he completed his check-in at 26 Federal Plaza. In a reversal of a years-long policy and practice of rarely, if ever, conducting civil immigration arrests at courthouses, Respondents issued new interim guidance on January 20, 2025 (January 2025 Memo), finalized in a May 27, 2025 memorandum (May 2025 Memo), permitting civil immigration arrests at courthouses generally. See Declaration of Guofeng Li, dated July 2, 2025 (hereinafter Li Decl.), Exhs. 2, 3.

The ongoing civil arrests at Immigration Courts by Respondents stem from a significant change in policy and practice. On April 27, 2021, Respondents issued a memorandum titled "Civil Immigration Enforcement Actions in or near Courthouses" (April 2021 Memo). See Exh. 1 to Li Decl. That memo strictly limited civil immigration enforcement in or near courthouses to four specific circumstances: (1) national security threats; (2) imminent risk of death, violence, or physical harm; (3) hot pursuit of public safety threats; or (4) imminent risk of evidence destruction in criminal cases. Moreover, absent hot pursuit, ICE could only make civil arrests of public safety threats where no safe alternative location existed or with senior-level pre-approval. *Id.* at 2. The memo explicitly covered Immigration Courts, and one of the core rationales underlying this policy was that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair

administration of justice." *Id.* at 1.

This framework underwent a fundamental transformation on January 20, 2025, when Respondents rescinded the April 2021 Memo and issued new interim guidance. See Exh. 2 to Li Decl. The guidance was finalized on May 27, 2025.[1] See Exh. 3 to Li Decl. (May 2025 Memo). In or around May 21, Respondents built upon this memo by initiating a policy of indiscriminate detentions at Immigration Courts around the country. See Exh. 7 to Li Decl. (articles describing courthouse arrest campaign and arrests at ICE check-ins). The policy proceeds in two parts: first, Respondents move to dismiss removal proceedings for the purpose of placing the non-citizen into expedited removal proceedings. Then, irrespective of the outcome of that motion, Respondents detain individuals as they leave court. No individualized custody review—considering, inter alia, the disposition of the motion to dismiss; pending applications for relief; or other equitable factors such as age, health, or caretaking responsibilities—occurs.

As Respondents conducted no individualized custody review and had no reason to believe that Shuo had become a flight risk or danger to the community, Shuo's detention pursuant to this policy—where there was no change of circumstances supporting his detention—is arbitrary and capricious.

A. Shuo's Detention Pursuant to The Courthouse Arrest Policy is Arbitrary and Capricious.

The Administrative Procedure Act (APA) prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious if the agency "entirely failed to consider an

[1] The May 2025 Memo is substantively identical to the January 2025 Memo, save for removing language that limited enforcement where precluded by local law. Compare January 2025 Memo, at 2 with May 2025 Memo, at 2.

important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." Dep't of Com. v. New York, 588 U.S. 752, 773 (2019) (quoting State Farm, 463 U.S. at 43). Shuo's detention fails to meet these fundamental requirements.[2]

Shuo's detention—absent any showing of individualized factors necessitating re-detention and while he had ongoing removal proceedings—is arbitrary and capricious. His removal from the United States is not imminent, as he has ongoing proceedings in Immigration Court. Indeed, Shuo remains in the same procedural posture as when he was released on his own recognizance when he entered the United States—in full immigration court proceedings before an immigration judge pursuant to Section 240 of the Immigration and Nationality Act. Since then, he has filed timely for asylum and has only deepened his ties to his New York community, where he works as a cleaner at Newbody Spa in Brooklyn and provides generous assistance to seniors and others in need. Shuo has no criminal history and poses no danger to the community. In addition, detention is unnecessary to assure his attendance at Immigration Court, as evidenced by the fact that Shuo appeared at his routine check-in, on the date of his detention. His arrest,

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[2] Shuo's detention is final, reviewable agency action as it "mark[s] the consummation of the agency's decisionmaking process" and is action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (cleaned up). *See Lopez*, 2018 WL 2932726, at *7-8 (arrest and subsequent detention by ICE is final agency action); *State v. ICE*, 19-cv-8876 (JSR), 431 F. Supp. 3d 377, 386 (S.D.N.Y. 2019) (prior ICE directive regarding courthouse arrests was final agency action).

without any individualized hearing, violates the APA because it is without "rational connection between the facts found and the choice made" to detain him. *Dep't of Com.*, 588 U.S. at 773.

To the extent that Shuo's detention was pursuant to Respondents' new check-in arrest policy targeting individuals in the United States for less than two years, that change in policy does not cure his detention being arbitrary and capricious. Changes in agency policy must be the product of reason. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) ("an agency changing its course must supply a reasoned analysis") (quotation omitted). As applied to Shuo, the check-in arrest policy arbitrarily precluded him from accessing an individualized custody review or seeking any pre-detention remedy. Indeed, there is no evidence of any changed circumstances since his initial release on recognizance that could justify his sudden re-detention, and Respondents have offered no reasoned explanation for indiscriminately detaining compliant individuals like Shuo who have appeared for all required check-ins and have established strong community ties. Yet, under Respondents' new policy, his arrest was apparently a foregone conclusion, irrespective of his compliance or the absence of any flight risk or danger, "fail[ing] to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43.

Further, the check-in arrest policy presented Shuo with an untenable choice: either attend his mandatory routine check-in at 26 Federal Plaza and risk immediate detention or avoid the check-in entirely and face potential consequences for non-compliance with reporting requirements. This policy effectively penalizes individuals like Shuo—who have fully complied with all immigration obligations and appeared voluntarily—for exercising their right to participate in the administrative process, thereby undermining due process and the integrity of removal proceedings under Section 240 of the Immigration and Nationality Act. See Exh. 7 to Li Decl. (articles describing fear of attending court engendered by new policy). This chilling effect strikes at the

heart of a noncitizen's ability to participate in the administrative process that Congress created, and no adjudicative body can properly function when parties fear appearing before it.[3] Respondents have failed to provide a reasoned explanation balancing their detention of Shuo pursuant to this new policy against the "significant reliance interests" of non-citizens appearing in court for routine hearings with no expectation of detention. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). Accordingly, Shuo's arrest—where there is no proof of changed circumstances warranting his re-detention—is arbitrary and capricious.

III. IMMEDIATE RELEASE IS NECESSARY.

As Shuo's detention violates both his substantive and procedural right to due process, and the APA, immediate release is necessary. *See Valdez*, 2025 WL 1707737 (ordering the release of an individual detained at an immigration courthouse based on due process violations). This Court has the power, pursuant to its inherent authority, to grant Shuo release during the pendency of this petition. *See Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). Under *Mapp*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." *Id.*; *see also Elkimya v. Dep't of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (discussing standard and holding that the REAL ID Act of 2005 "did not qualify our inherent authority to admit bail to petitioners in immigration cases"). Shuo's petition raises all three of these scenarios and warrants his immediate release.

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[3] Respondents were well aware of these problems, which animated their prior April 2021 Memo, but ostensibly chose to disregard them altogether in their May 2025 Memo and its implementation in their courthouse arrest policy, thus "fail[ing] to consider an important aspect of the problem." *State Farm*, 463 U.S at 43. Respondents' April 2021 Memo explicitly recognized that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice." Exh. 1 to Li Decl. Those very concerns are being borne out today, in the arbitrary detentions of individuals such as Shuo, who poses neither flight risk nor danger. That Respondents failed to confront these concerns in their new courthouse arrest policy epitomizes arbitrary decision-making. See *Encino Motorcars*, 579 U.S. at 221-22.

First, as set forth above, Shuo—re-detained without any individualized showing of his flight risk or danger to the community—has raised substantial claims under the Due Process Clause of the Fifth Amendment and the APA. *See supra* Sections I, II.

Second, the facts of this case, involving the detention of a 26-year-old Chinese national with no criminal history and strong ties to the community, are extraordinary. Moreover, Shuo is not, nor do Respondents allege as much, a danger to the community or flight risk. On the contrary, in addition to working diligently as a cleaner at Newbody Spa in Brooklyn to support himself and his family in China—including his mother in poor health and his younger brother in college—Shuo has deep family, community, and humanitarian ties. Indeed, Shuo also complied with the requirements of the immigration process, having submitted a timely application for asylum with the Elizabeth, New Jersey Immigration Court, and was detained after having appeared for his routine check-in with ICE. Respondents have presented no evidence of changed circumstances since his initial release on recognizance in August 2023 that could justify re-detention, further underscoring the arbitrary nature of his confinement.

Finally, release is also necessary to ensure that the writ of habeas corpus is an effective remedy as the process owed to Shuo was *pre-deprivation*. *See Jorge M.F. v. Jennings*, 21-cv-1434 (JST), 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (finding a bond hearing after detention insufficient process and noting respondents "misapprehend the purpose of a predetention hearing: if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"). District courts have consistently recognized that post-hoc process is inadequate and have ordered release where, like here, ICE re-detained a previously released individual in violation of their due process rights. *See, e.g.*, *Valdez,* 2025 WL 1707737, at *3; *McAleenan*, 385 F. Supp. 3d at 365; *Lopez,* 2018 WL 2932726, at *12; *Ceesay v. Kurzdorfer*, 25-cv-267 (IJV), 2025 WL 1283720, at

*2 (W.D.N.Y. May 2, 2025). As Shuo was similarly denied any process before he was re-detained, immediate release is appropriate here.

Moreover, this Court can and should release Shuo pursuant to its inherent authority under *Mapp*, as Shuo is ineligible for bond before the Immigration Court pursuant to the holding in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), because Shuo had been detained upon his entry into the United States and placed into removal proceedings as an arriving alien who entered without inspection, he was ineligible for bond. *See, e.g.*, Exh. 8 to Li Decl. (*Castillo-Maradiaga v. Decker*, 21-cv-842 (KPF), Tr. at 2:20-21, 39:12-40:5 (S.D.N.Y. Mar. 4, 2021) (noting immigration judge had denied bond days prior before conducting separate analysis and granting bail under *Mapp*).

CONCLUSION

For the foregoing reasons, Petitioner Shuo Wang respectfully requests that this Court order his detention violates the Due Process Clause and the APA and order his immediate release.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing memorandum of law complies with all formatting requirements of this Court and contains 6,087 words, including footnotes and headings but excluding the cover page, this certificate, the tables, and the signature blocks. I relied on the word count of the Microsoft Word computer program used to prepare this brief.

Date: December 22, 2025

/s/ *Guofeng Li*
Guofeng Li, Esq.