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12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 EUGENE WEI YU,

19 Defendant.

CASE NO. BA509784

**DEFENDANT EUGENE WEI YU'S
NOTICE OF MOTION AND MOTION
FOR BAIL REVIEW**

*[Declaration of Gary S. Lincenberg filed
concurrently herewith]*

Date: October 24, 2022
Time: 8:30 a.m.
Crtrm.: Department 30

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on Monday, October 24, 2022, at 8:30 a.m.,
3 before the Honorable Judge Sullivan, Defendant Eugene Wei Yu will and hereby does
4 move for review of the October 14, 2022 Bail Order, and request that bail be set in a
5 reasonable amount and with such terms and conditions that will allow Mr. Yu to be
6 released from home detention in Los Angeles, untethered from an electronic monitor, and
7 to resume working at Konnech, Inc.

8 This motion is based on the memorandum of points and authorities contained
9 herein, and on such further evidence and argument as may be presented at the hearing of
10 this motion.

11
12 DATED: October 21, 2022

Gary S. Lincenberg
Alexis A. Wiseley
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.

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16 By: 

17 _____
18 Gary S. Lincenberg
19 *Attorneys for Defendant Eugene Wei Yu*
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION¹**

3 Eugene Wei Yu is a United States citizen who has never committed a crime. He and
4 his family are kind, responsible citizens. They are an integral part of their Michigan
5 community. Mr. Yu runs a lawful business that serves an important public function helping
6 counties and cities recruit, train and schedule poll workers—particularly in the weeks
7 leading up to a mid-term election. His wife, Dr. Donna Wang, is a professor at Michigan
8 State University Medical School. His daughter is a physician. His son-in-law is an
9 attorney. They also reside in Michigan with their child. Mr. Yu is not and has never been a
10 danger to the community or flight risk. Consistent with the recommendation in his Pretrial
11 Investigative Report (Ex. 1), he is deserving of release, on his own recognizance, while he
12 fights to clear his name of the false criminal charge against him. At minimum, he should
13 be allowed to reside at his home in Michigan, resume communicating with his employees,
14 and be untethered from an electronic monitoring device.

15 This case began with an organization known by the misnomer *True the Vote, Inc.*
16 and its wealthy QAnon-associated leaders Gregg Phillips and Catherine Engelbrecht
17 (collectively referred to as the “the election deniers”). They are in business to capitalize
18 from their claim that the 2020 presidential was “stolen”. The election deniers conjured up a
19 story that because Mr. Yu’s company, Konnech Inc. (“Konnech”), sells software and
20 services to local election authorities to help manage poll workers, and because Mr. Yu is
21 Chinese, that they could publicly tarnish Mr. Yu as having helped steal the 2020 election
22 from President Trump. ***But neither Konnech nor Mr. Yu have ever tabulated votes or***
23 ***handled election ballots.*** Every claim that the election deniers have made has been labeled
24 false by responsible observers. A United States District Court Judge issued a TRO against
25 the election deniers, finding that Konnech has established a substantial likelihood of
26 success on the merits of its claims that the election deniers are defaming Konnech and Mr.

27 _____
28 ¹ Exhibits are to the Declaration of Gary S. Lincenberg filed concurrently herewith.

1 Yu. The election deniers now acknowledge that the FBI is investigating them due to their
2 alleged unauthorized breach of Konnech’s computer system, which resulted in attacks and
3 death threats on Mr. Yu and his family. But while the election deniers have been
4 thoroughly discredited by the judicial system, the responsible media, and apparently the
5 FBI, they appear to have convinced the Los Angeles County District Attorney (“DA” or
6 “Prosecutor”) that Konnech did not store all of its poll worker data in the United States as
7 required by its contract with the Los Angeles County Registrar. Incredibly, the DA has
8 tried to convert what is, at best, a civil contract dispute into a criminal embezzlement
9 charge.

10 The matter came before this Court for setting of bail. At a hearing on October 14,
11 2022, the Court noted that it had no facts or documents other than a complaint to consider
12 in determining bail. The Prosecutor asked for detention. When this Court made clear that
13 bond would be set, the Prosecutor urged the Court to set as conditions to Mr. Yu’s bail (i)
14 that Mr. Yu be confined to home detention in Los Angeles, even though his home is in
15 Michigan and he voluntarily appeared for his arraignment in Los Angeles; and (ii) that Mr.
16 Yu be barred from any communications with employees or involvement in his business,
17 even though Konnech needs to perform an important service for cities and counties across
18 the country in the weeks leading up to an election, and Mr. Yu is critical to its operations.²

19 The Prosecutor then made the wild, unsupported statement that this case involved
20 the “largest data breach in United States history.” Oct. 14, 2022 Hr’g Tr. 9:24-28. The
21 Prosecutor presented no evidence to support this inflammatory remark. Indeed, the People
22 have presented no evidence or discovery that *any* confidential information was leaked to
23 the public *whatsoever*. Nor did the Prosecutor advise the Court that the supposed victim of
24 the alleged contract violations—*the County Registrar—has distanced the County from*
25 *this prosecution and publicly expressed the County’s commitment to continue working*
26

27
28 ² The restriction on communications were not limited to the LA County contract at issue.

1 *with Konnech in the upcoming election.*³ Thus, the *only* possible harm that may be
2 caused to the public would occur (1) if the election deniers who solicited the DA to do
3 their bidding leak the information that they allegedly stole, or (2) if the false criminal
4 charge so reputationally damages Konnech that it cannot continue to support Los Angeles
5 County and its other county customers across the country, thereby causing significant
6 operational problems in the midterm elections.

7 Now that the People have provided discovery, it is even more puzzling, and tragic,
8 that a criminal complaint has been filed. The Complaint cites to a paragraph (contained in
9 Konnech’s 154-page contract with the County) that limits access to poll workers’
10 Personally Identifiable Information (“PII”) to employees based in the United States. *See*
11 *Compl.* at 1-2. The Complaint suggests that Konnech’s third-party contractors in China
12 had access to poll worker data, and that therefore the contract payments from LA County
13 to Konnech somehow constitute embezzlement. *See id.* at 4. But neither the Complaint nor
14 the discovery suggests that *any* information was improperly shared with contractors or
15 stored on servers in China.

16 Pursuant to the Court’s statement that the initial bond order is “without prejudice
17 for a modification ... after the Court has heard some facts” (Oct. 14, 2022 Hrg. Tr. 13:3-
18 13), Mr. Yu respectfully requests that the Court modify his bail conditions as set forth
19 herein.

20 **II. FACTUAL BACKGROUND**

21 **A. Mr. Yu’s Personal Background**

22 Mr. Yu is a 65-year-old United States citizen with no criminal history and deep
23 family and business ties to the state of Michigan. Mr. Yu was born and raised in Jinhua
24 City, China. In 1974, as part of China’s cultural revolution, Mr. Yu was sent to a
25 communal farm where he labored for four years in squalor conditions. In 1977, after
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27 ³ *See Michigan election software firm CEO arrested for alleged theft of poll worker data,*
28 *CBS NEWS* (Oct. 5, 2022), <https://www.cbsnews.com/detroit/news/ceo-of-election-software-firm-held-on-id-info-theft-charges/>.

1 Chairman Mao died, Mr. Yu scored high on a nationwide test, qualifying him for
2 admission to study engineering at Zhejiang University. After graduating from college, he
3 was sent to work in various locations in China. Mr. Yu then met and married his wife
4 Donna Wang.

5 In 1986, Mr. Yu and Dr. Wang were accepted to graduate school programs at Wake
6 Forest University, where Mr. Yu obtained his MBA degree. While at Wake Forest, their
7 daughter was born. After completing their education at Wake Forest, they moved to
8 Texas, where Dr. Wang became a medical school professor at the University of Texas.
9 And in 1999, Dr. Wang was offered a tenured medical professorship at Michigan State
10 University in Michigan, where the Yu-Wang family has lived for the past 23 years.⁴
11 During the 1990s, Mr. Yu had several jobs and continued to expand his professional
12 education, including by obtaining other professional licenses.

13 In 1997, Mr. Yu became a United States citizen. The United States has been his
14 home for 36 years.

15 **B. Mr. Yu Founded Konnech In Michigan**

16 After moving to Michigan in 1999, Mr. Yu founded Konnech. Konnech is a
17 closely-held corporation that provides election logistics software called PollChief to cities
18 and counties across the United States. PollChief assists with recruiting, training and
19 scheduling poll workers; coordinating the distribution of equipment and supplies to polling
20 places; and dispatching support personnel to address technical and other issues.

21 (Konnech's software products *are not* and *have never been* involved in voter registration
22 or ballot counting.) Until this criminal complaint damaged its business, Konnech had over
23 30 customers across the United States—including cities and counties in California,
24 Colorado, Florida, Georgia, Indiana, Kansas, Massachusetts, Michigan, Minnesota,
25

26 _____
27 ⁴ Dr. Wang's research has received numerous honors and awards for her work. Dr.
28 Wang's research has been widely published and praised for advancing medical care. Her
commitment to caring for the infirm inspired their daughter to become a physician. Dr.
Wang submitted a letter in support of this motion. *See Ex. 2.*

1 Missouri, New Jersey, Texas and Virginia—and employed approximately 21 persons in
2 Michigan.

3 Konnech hosts all customer data exclusively in its country of origin. This means
4 that data belonging to Konnech’s United States customers, including Los Angeles County,
5 is hosted only on secure servers within the United States. Like most tech companies,
6 Konnech works with employees and contractors across the globe. For example,
7 programmers in China help develop and test computer code for Konnech, generally using
8 generic “dummy” data, or sanitized data, created specifically for testing purposes.

9 As the CEO, Mr. Yu is critical to overseeing Konnech’s business and ensuring that
10 its local government clients receive excellent service. As discussed below, the current bail
11 conditions make this nearly impossible. When customers have questions or Konnech
12 employees need to make business decisions, they have no CEO readily available to provide
13 guidance. They worry that Konnech’s payroll will stall when the next pay period ends on
14 October 28, 2022. They worry that Konnech will be unable to effectively service its
15 customers in the run-up to the November 8th elections. As a result of the criminal charge
16 and the election deniers’ and their followers’ threats and harassment, employees fear for
17 their safety and well-being.

18 **C. Election Deniers Targeted Konnech**

19 In the summer of 2022, Konnech was targeted by election deniers searching for
20 people they could accuse of stealing the 2020 election from President Trump. Ex. 3 ¶¶ 20.
21 The election deniers have repeatedly, baselessly and xenophobically claimed that Mr. Yu,
22 Konnech and its employees are “Chinese operatives,” who are spearheading a “red
23 Chinese communist op run against the United States” to “subver[t] ... our elections” (*id.* ¶¶
24 34, 37, 53), including by maintaining unsecure Chinese servers, on which it stores personal
25 data, including social security numbers, email addresses, phone numbers, and banking
26 information of U.S. poll workers. *Id.* ¶¶ 46-50. In spreading this misinformation, the
27 election deniers have admitted to hacking and stealing Konnech’s data, which has made
28 the election deniers themselves the subject of an FBI investigation. *Id.* ¶¶ 7, 42 (during a

1 September 2, 2022 podcast, election denier Gregg Phillips admitted that the FBI has
2 accused him of being a “thief”).

3 The consequences of the election deniers’ actions and accusations against Mr. Yu
4 and Konnech have been life-changing. Mr. Yu has been the target of death threats. For
5 example, Mr. Yu received emails warning him that he has “been exposed for voter fraud in
6 the 2020 election,” which is “punishable by death,” and emails urging Mr. Yu to “book
7 flights back to Wuhan before we hang you until dead!” *Id.* ¶ 28. Out of fear for their
8 safety, Konnech employees have also stopped going into the company’s office to work.

9 The election deniers have also destroyed new business opportunities for Konnech.
10 Counties otherwise interested in using its PollChief software for the upcoming midterm
11 elections simply do not want to become targets themselves of the election deniers and their
12 adherents. And Konnech has had to spend significant resources to investigate and to
13 combat the voter fraud claims, and to take extra precautions against unauthorized access to
14 its computers. *Id.* ¶¶ 57-59.

15 On September 12, 2022, Konnech filed a civil complaint against the election deniers
16 in the District Court for the Southern District of Texas, seeking injunctive relief and
17 asserting claims for defamation, tortious interference with business relations, theft, and
18 violations of the Computer Fraud and Abuse Act, among other claims. *See id.* ¶¶ 62-140.
19 On the same day, District Judge Kenneth Hoyt granted Konnech’s Motion for a Temporary
20 Restraining Order. *See Ex. 4.* The election deniers have since refused to comply with
21 substantial provisions in Judge Hoyt’s order.

22 Thus, during an October 6, 2022 hearing attended by the press, Judge Hoyt
23 excoriated the election deniers for pedaling a false narrative, and concealing information
24 that would reveal how Konnech’s confidential information was stolen and—critically—
25 whether the information was stored in China. *See, e.g., Ex. 5 at 23:14-18* (“THE COURT:
26 ... So you don’t have ... verification ... that this information had come from China. MR.
27 AKERS: ... I have no verification.”); 49:15-16 (“THE COURT: I don’t really have any
28 confidence in any of these folk who claim they are [accomplishing election integrity]”).

1 See also Natalia Contreras, *In heated exchange, federal judge demands True the Vote*
2 *identify who provided access to poll worker data*, TEXAS TRIBUNE (Oct. 7, 2022),
3 <https://www.texastribune.org/2022/10/07/true-the-vote-lawsuit-texas-konnech/>.

4 The election deniers had hoped that convincing the DA to arrest Mr. Yu and bring
5 false charges against him in California would help them. But, at the October 6, 2022
6 hearing, Judge Hoyt expressed skepticism about the circumstances of Mr. Yu’s arrest, and
7 immediately saw through the election deniers’ scheme, stating “*we are not having a*
8 *hearing because his client [Mr. Yu] has been arrested by people who are intent on flipping*
9 *the script.*” Ex. 5 at 38:17-18 (emphasis added); see also *id.* at 27:23-28:5 (“THE
10 COURT: ... [S]uddenly [Mr. Yu] gets arrested so he can’t show up in my court ... [Mr.
11 Yu’s] an American citizen. And I would hate to think that just because he has a Chinese
12 name, that that makes him less of a citizen than anybody else in this courtroom.”). The
13 Judge further stated that the arrest of Mr. Yu may constitute an “obstruct[ion] [of] justice,”
14 and has set a show cause hearing for the election deniers to demonstrate why they should
15 not be held in contempt for their refusal to comply with the Court’s injunction order. *Id.* at
16 27:21-22. Notably, the show cause order entered by Judge Hoyt stated that “*a preliminary*
17 *injunction will issue shortly.*” Ex. 6 at n.1 (emphasis added).

18 Undeterred, the election deniers have pounced on the instant Complaint and bail
19 order to advance their cause and spread misinformation. Just this week, in a blog post,
20 adherents of the election deniers claimed that Mr. Yu “fled the country on Friday ... for his
21 homeland, China,” leaving his wife—a “suspected Chinese spy”—behind.⁵ The election
22 deniers even commented on the timing of Mr. Yu’s trial in this case:

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26 ⁵ *China’s election fixer, Konnech’s Yu, escapes the U.S. leaving his spy network intact at*
27 *MSU* (Oct. 18, 2022), [https://www.brassballs.blog/home/wei-jianwei-npr-msuf-konnech-
28 msu-lansing-fbi-la-da-china-ccp-bekkas-red-cedar-ventures-rebekah-skrzyniarz-david-
washburn-wang-donna-d-h-gascon-spy-kriger-strongnation-siemon-carol-ingham-yu-
eugene](https://www.brassballs.blog/home/wei-jianwei-npr-msuf-konnech-msu-lansing-fbi-la-da-china-ccp-bekkas-red-cedar-ventures-rebekah-skrzyniarz-david-washburn-wang-donna-d-h-gascon-spy-kriger-strongnation-siemon-carol-ingham-yu-eugene).



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8 **D. The Instant Complaint**

9 On October 4, 2022, Mr. Yu was arrested pursuant to an indictment. He spent two
10 harsh nights jailed while police ransacked his home and struck terror in his employees as
11 they searched Konnech’s office, removing computers, servers, and other equipment
12 necessary to the company’s operations. The election deniers bragged about their role in
13 obtaining this indictment against Mr. Yu:

14 “True the Vote is honored to have played a small role in what
15 must have been a wide ranging and complex investigation. The
16 organization is profoundly grateful to the Los Angeles District
Attorney’s office for their thorough work and rapid action in
this matter.”

17 *True The Vote Issues Statement Regarding The Arrest Of Konnech Ceo Eugene Yu*, TRUE
18 THE VOTE (Oct. 4, 2022), [https://www.truethevote.org/statement-regarding-arrest-](https://www.truethevote.org/statement-regarding-arrest-konnech-ceo-eugene-yu/)
19 [konnech-ceo-eugene-yu/](https://www.truethevote.org/statement-regarding-arrest-konnech-ceo-eugene-yu/).

20 For reasons the DA has thus far concealed, the DA has refused to unseal the
21 indictment. Instead, on October 13, 2022, the People filed a Complaint against Mr. Yu,
22 charging conspiracy to embezzle public funds pursuant to California Penal Code § 182(a)
23 (Count I), and embezzlement of public funds pursuant to California Penal Code §§ 503 and
24 514 (Count II). In contemporaneous news reports, the DA acknowledged that its
25 investigation into Mr. Yu began only after an election denier sent them a tip. *See* Stuart A.
26 Thompson, *Election Firm Knew Data Had Been Sent to China, Prosecutors Say*,
27 NYTIMES (Oct. 13, 2022), [https://www.nytimes.com/2022/10/13/technology/konnech-](https://www.nytimes.com/2022/10/13/technology/konnech-eugene-yu-election-data.html)
28 [eugene-yu-election-data.html](https://www.nytimes.com/2022/10/13/technology/konnech-eugene-yu-election-data.html) (“The Los Angeles County district attorney’s office said its

1 investigation began after Mr. Phillips had sent a tip to its public integrity division.”).⁶

2 The Complaint alleges that Mr. Yu entered into contracts on behalf of Konnech
3 with the County of Los Angeles (“LA County”) to provide secure poll worker management
4 software. Compl. at 1. The October 2020 contract contains provisions governing
5 information security which state, in relevant part, that:

- 6 • “[Konnech] shall screen and conduct background checks on all Contractor
7 personnel contacting County’s Confidential Information, including Personally
8 Identifiable Information, for potential security risks.”
- 9 • “Personally Identifiable Information, and County’s Confidential Information: (i)
10 may only be made available and accessible to those parties explicitly authorized
11 under the Contract or otherwise expressly approved by County in writing.”
- 12 • “Only [Konnech’s] staff who are based in the United States and are citizens or
13 lawful permanent residents of the United States shall have access to any County
14 data, including personally identifiable information, hosted in County’s instance of
15 the System Software.”

14 Compl. at 1-2.

15 The Complaint alleges that, in contravention of these provisions, “[Mr.] Yu and
16 other employees at Konnech Inc. were providing these services to [LA County] using
17 third-party contractors based in China ” and “sent [PII] of [LA County’s] election workers
18 to third-party software developers who assisted with creating and fixing Konnech’s
19 internal ‘PollChief’ software.” *Id.* at 2-3. As a result of this purported breach, the
20 Complaint alleges that Mr. Yu “fraudulently appropriated public funds” from LA County.
21 *Id.* at 4. On October 4, 2022, ***the DA conceded in a press release that “the alleged***
22 ***conduct had no impact on the tabulation of votes and did not alter election results.”***
23 ***Head of Election Worker Management Company Arrested in Connection with Theft of***
24 ***Personal Data***, LA DA’S OFFICE (Oct. 4, 2022), <https://da.lacounty.gov/media/news/head->
25

26 _____
27 ⁶ This revelation is an about-face from the DA’s earlier representations to the media that
28 the election deniers “had no input on the county’s investigation.” Stuart A. Thompson,
Election Software Executive Arrested on Suspicion of Theft, NY TIMES (Oct. 6, 2022),
<https://www.nytimes.com/2022/10/04/technology/election-software-arrested.html>.

1 election-worker-management-company-arrested-connection-theft-personal-data (emphasis
2 added).

3 On October 14, 2022, the People produced discovery relating to its allegations.
4 Contrary to the Prosecutor’s statement to the court, the discovery reveals no disclosure of
5 PII to anyone outside of the United States. Nor does it suggest the release of any PII to
6 persons unaffiliated with Konnech. But based on the evidence to date, and the history of
7 good work performed by Konnech, the Registrar still plans to use Konnech for the
8 upcoming election.⁷ Notably, the Registrar appears concerned by the impact of the DA’s
9 charges. Indeed, in response to the DA’s charges, the Registrar released a public statement
10 explaining that the County’s “focus remains on ensuring the administration of this election
11 is not disrupted” by the DA’s filing. *Michigan election software firm CEO arrested for
12 alleged theft of poll worker data*, CBS NEWS (Oct. 5, 2022), [https://www.cbsnews.com/
13 detroit/news/ceo-of-election-software-firm-held-on-id-info-theft-charges/](https://www.cbsnews.com/detroit/news/ceo-of-election-software-firm-held-on-id-info-theft-charges/).

14 **E. Current Bail Conditions**

15 On October 14, 2022, the Court held a bail hearing, at which the Prosecutor urged
16 the Court to detain Mr. Yu without bail because they claim that his “deep ties to China”
17 pose an “extensive flight risk.” Oct. 14, 2022 Hr’g Tr. 4:4-7. The Court found that
18 detention was not warranted and set bail at \$500,000 with electronic monitoring. As the
19 Court was setting conditions, however, the Prosecutor interrupted twice to seek to prevent
20 Mr. Yu from returning to his family and Konnech in Michigan. With no evidence before it
21 other than the Complaint—indeed, not until the hearing was the Court made aware that the
22 Pretrial Investigative Report found that Mr. Yu posed no flight risk warranting detention
23 and that the alleged conduct, even if true, was “an isolated incident and aberrant behavior
24 on the part of the defendant” (Ex. 1)—the Court ordered Mr. Yu to be confined to a hotel
25 room in Los Angeles and to cease all direct communications with employees of Konnech.

26
27 ⁷ The County Registrar is currently performing an audit that it began before Mr. Yu was
28 arrested and with which Konnech has been, and intends to continue, cooperating.

1 For United States citizen with “strong family ties” in the United States, a
2 “longstanding residence” in the United States, and no criminal record, these conditions are
3 extremely onerous and unwarranted. Ex. 1. They serve as harsh punishment for a man who
4 is presumed innocent and has not yet had his day in court. Since the bail hearing, this 65
5 year old law-abiding man has been confined to a hotel room, unable to leave even to
6 exercise or go to the grocery store. He is paying hundreds of dollars per day for a hotel
7 room and to have food brought in. The unwarranted restrictions on his liberty are severely
8 impeding his ability to earn a living and provide for his family and employees. Mr. Yu has
9 medical conditions that are going untreated.

10 **III. PROPOSED BAIL CONDITIONS**

11 Mr. Yu respectfully requests that the conditions of bond be modified to so that he be
12 released on his own recognizance. Alternatively, Mr. Yu requests that the conditions be
13 modified to:

- 14 1. Permit Mr. Yu to be released on the currently set \$500,000 bond (which he
15 has posted);
- 16 2. Restrict Mr. Yu’s travel to Michigan and California unless prior approval is
17 obtained from Pretrial Services;
- 18 3. Require Mr. Yu to surrender his passport (which has been done); and
- 19 4. Remove the condition that he communicate with Konnech, Inc. employees
20 only through his attorneys.

21 **IV. DISCUSSION**

22 “In criminal cases, there are few limits on a court’s power to reconsider interim
23 rulings.” *In re Alberto*, 102 Cal. App. 4th 421, 426 (2002), *as modified* (Sept. 30, 2002),
24 citing *People v. Castello* (1998) 65 Cal. App. 4th 1242, 1246, 77 Cal.Rptr.2d 314. “This
25 rule is founded on our preference for justice over the rigid adherence to procedure,”
26 “particularly in criminal cases where life, liberty, and public protection are at stake.” *In re*
27 *Alberto*, 102 Cal. App. 4th at 427.

28 Except under limited circumstances, the California Constitution guarantees a

1 pretrial right to release on non-excessive bail. Cal. Const. art. I, § 12. “In setting,
2 reducing, or denying bail ... public safety shall be the primary consideration.” Cal. Penal
3 Code § 1275(a)(1). The Court must also consider “the seriousness of the offense charged,
4 the previous criminal record of the defendant, and the probability of his or her appearing at
5 trial or at a hearing of the case.” *Id.* After a defendant has been admitted to bail upon an
6 indictment, the Court may, upon good cause shown, reduce the amount of bail. Cal. Penal
7 Code § 1289.

8 **A. The Protection of the Public**

9 As an initial matter, home detention and electronic monitoring are bail conditions
10 ordinarily reserved for defendants “*accused of ... serious and violent*” crimes. *In re*
11 *Brown*, 76 Cal. App. 5th 296, 300, 307 (2022), *review denied* (June 22, 2022) (emphasis
12 added). At its core, the Complaint here alleges that Mr. Yu, acting on behalf of Konnech,
13 breached its contract with LA County. *See* Compl. at pp. 1-3. A breach of contract by
14 Konnech, not Mr. Yu, is a far cry from the charges in cases where home detention or
15 electronic monitoring is deemed an appropriate bail condition. *See, e.g., People v. Gerson*,
16 80 Cal. App. 5th 1067, 1073 (2022), *review denied* (Sept. 14, 2022) (charged with
17 “attempted voluntary manslaughter”); *People v. Yanez*, 42 Cal. App. 5th 91, 94 (2019)
18 (charged with “possessing more than one kilogram of methamphetamine for sale”);
19 *People v. Pottorff*, 47 Cal. App. 4th 1709, 1712 (1996) (charged with “committing a lewd
20 or lascivious act with a child”).

21 Even if Mr. Yu posed a danger to the public (he does not), “[b]ail conditions
22 intended for public protection must be reasonable.” *Gray v. Superior Ct.*, 125 Cal. App.
23 4th 629, 642 (2005), citing *In re McSherry*, 112 Cal. App. 4th 856, 863 (2d Dist. 2003). A
24 bail condition confining Mr. Yu to a Los Angeles hotel room—more than 2,000 miles
25 away from his home, family, and business in Michigan—is not reasonable here. It
26 imposes a significant financial, physical, and emotional toll on Mr. Yu. This bail condition
27 imperils not only Mr. Yu’s job, but also the future of Konnech and the jobs of its
28 employees. It unnecessarily separates Mr. Yu from his wife, daughter, son-in-law, and

1 small grandchild, all of whom live in Michigan. These effects are akin to the “direct
2 ‘grievous loss’ of freedom” that a defendant in the physical custody of authorities might
3 feel.⁸ *In re Humphrey*, 11 Cal. 5th 135, 142 (2021); *see also Gerstein v. Pugh*, 420 U.S.
4 103, 114, 123 (1975) (recognizing that “[p]retrial confinement may imperil the suspect’s
5 job, interrupt his source of income, ... impair his family relationships” and undermine his
6 “ability to assist in preparation of his defense”).

7 Moreover, when a court imposes a bail condition that implicates a fundamental
8 liberty such as engaging in one’s occupation, due process requires that certain procedural
9 protections apply. Indeed, “[i]t is axiomatic that the right of an individual to engage in any
10 of the common occupations of life is among the several fundamental liberties protected by
11 the due process ... clause[] of the Fourteenth Amendment.” *Naidu v. Superior Ct.*, 20 Cal.
12 App. 5th 300, 308 (2018). Thus, before a defendant can be barred from engaging in their
13 occupation, he must be provided with proper notice and the government must present
14 “evidence showing an immediate risk to the public.” *Id.* at 309.

15 Here, the People neither provided Mr. Yu with notice that they intended to seek a
16 bail condition barring him from working at Konnech, nor presented any evidence showing
17 that his continued involvement with Konnech presents an immediate risk to the public. To
18 the contrary, the Prosecutor raised this condition for the very first time at the October 14,
19 2022 hearing, without giving Mr. Yu’s counsel any opportunity to research and argue
20 against it. Further, the Court imposed this condition on the face of the Complaint alone,
21 *without considering any evidence whatsoever*,⁹ let alone evidence showing that Mr. Yu’s
22

23 ⁸ In fact, under some sections of the Penal Code, “[a] person may be ‘detained’ ...
24 *without being in the actual physical custody*” of the government. *People v. Am. Sur. Ins.*
25 *Co.*, 77 Cal. App. 4th 1063, 1065 (2000) (emphasis added) (interpreting Penal Code
26 Section 1305). *See also e.g., People v. Gerson*, 80 Cal. App. 5th 1067, 1087, 1089-90
27 (2022), *review denied* (Sept. 14, 2022) (awarding custody credits to a defendant
“discharged to home detention with a GPS device and subject to other conditions”). Such
is the case here.

28 ⁹ Indeed, the Court made clear at the bail hearing that “what I have before me here is a

1 return to work would pose an immediate risk to the public.¹⁰ This complete lack of notice
2 and evidence impaired Mr. Yu’s freedom to pursue his occupation, earn an honest living,
3 and support his family and employees. *See, e.g., Gray*, 125 Cal. App. 4th at 638 (finding
4 that the court “significantly impaired [the defendant’s] freedom to pursue a private
5 occupation,” explaining that “[t]he Attorney General simply appeared at [the defendant’s]
6 arraignment with a motion in hand, giving [his] attorney no opportunity to research the
7 issue”); *Naidu*, 20 Cal. App. 5th 300, 312–13 (rejecting “any notion that the People have
8 an interest in protecting the public at the expense of a criminal defendant’s due process
9 rights,” and explaining that the government must present “at least some evidence of danger
10 to the public [to] support an order suspending a business license as part of a bail order”).

11 Accordingly, because Mr. Yu poses no danger whatsoever to the public, and the
12 restrictive bail conditions were imposed without providing Mr. Yu notice or on the basis of
13 any evidence, the conditions ordering Mr. Yu to remain confined to his Los Angeles hotel
14 room, tethered to an electronic monitor, and uninvolved in his business, are inappropriate.

15 **B. The Nature of the Allegations**

16 As to the seriousness of the charge, the court considers “the alleged injury to the
17 victim, and alleged threats to the victim or a witness to the crime charged, the alleged use
18 of a firearm or other deadly weapon in the commission of the crime charged, and the
19 alleged use or possession of controlled substances by the defendant.” Cal. Penal Code §
20 1275(a)(2). The charges here involve neither threats, violence, nor drug use. At most, the
21 allegations involve Konnech’s—not Mr. Yu’s—sharing of PII of LA County employees
22 with its independent contractors who fix and improve the PollChief software. There is no
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25 complaint and a protective order for discovery. I don’t have a bail schedule. I don’t have
any history of the case or the procedures underlying it.” Oct. 14, 2022 Hr’g Tr. 3:7-16.

26 ¹⁰ It would not. The little discovery the government has produced since then does not
27 establish that Mr. Yu conspired with anyone to send PII of LA County poll workers to
28 anyone other than as anticipated by LA County.

1 claim that PII has been stored on a server in China or released to the public.¹¹ *See*
2 *generally* Compl. LA County itself remains committed to its contract with Konnech,
3 further belying the seriousness of the alleged contract breach.

4 **C. Lack of Criminal Record**

5 Mr. Yu has no previous criminal record. Indeed, as noted in the Pretrial
6 Investigative Report—which the People apparently did not consider in making their bail
7 recommendation—even if the allegations were true, “the instant matter [would be] an
8 isolated incident and aberrant behavior on the part of [Mr. Yu].” Ex. 1 (emphasis added).

9 **D. Risk of Non-Appearance**

10 As for the risk of non-appearance, there is none. When considering the likelihood
11 that a defendant will flee, courts consider “(1) the defendant’s ties to the community,
12 including his employment, the duration of his residence, his family attachments and his
13 property holdings; (2) the defendant’s record of appearance at past court hearings or of
14 flight to avoid prosecution; and (3) the severity of the sentence defendant faces.” *In re*
15 *Podesto*, 15 Cal. 3d 921, 934–35 (1976). As explained below, the DA’s claim at the
16 October 14, 2022 hearing that Mr. Yu’s “deep ties to China” pose an “extensive flight
17 risk” is disingenuous. Oct. 14, 2022 Hr’g Tr. 4:4-7.

18 *First*, Mr. Yu’s ties to the United States could not be stronger. He has been living
19 in the United States for more than 35 years and is a long-time United States citizen. At the
20 time he became a United States citizen, he relinquished his Chinese citizenship. He has
21 resided with his family in Michigan for more than 20 years. He has likewise grown
22 Konnech from the ground up in Michigan over the last 20 years. Konnech is important to
23 his community in Michigan. For example, in December 2021, Michigan Governor

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26 ¹¹ Notably, the discovery supporting the Complaint’s allegations includes only a list of
27 names and addresses of LA County poll workers—*not* social security numbers, email
28 addresses, phone numbers, and banking information. Even if this data reveals a breach of
contract, it cannot possible be the basis for criminal charges. Indeed, names and addresses
are publicly available information.

1 Gretchen Whitmer credited Konnech with helping to “grow[] our economy and creat[e]
2 jobs for Michigan residents.”¹² The Governor’s praise followed Konnech’s decision to
3 establish its headquarters in East Lansing, Michigan—*instead of overseas*—which the
4 company expected would generate a total capital investment of \$293,610 and create 51
5 well-paying new jobs. *Id.* These are precisely the sort of factors that weigh heavily
6 against the risk of non-appearance. *See, e.g., Harris v. United States*, 404 U.S. 1232, 1236
7 (1971) (finding no flight risk, explaining that defendant “is a self-employed auto mechanic,
8 ... has lived in Los Angeles for the past eight years, ... has several relatives, including his
9 mother and a sister, living there, and ... has never failed to make a required court
10 appearance”); *In re Pipinos*, 33 Cal. 3d 189, 199 (1982) (finding that defendant presented a
11 *prima facie* case for release based on facts “that defendant has lived in San Diego for
12 approximately 15 years; that he owns his own business which he intends to continue; that
13 he had no criminal history; and ... was residing with his wife and two children”).

14 *Second*, after being released on bail in Michigan, Mr. Yu did not flee. He got on an
15 airplane and flew to Los Angeles to appear for his arraignment.

16 *Third*, Mr. Yu has posted bond and the People have his passport. The Prosecutor’s
17 concern boils down to nothing more than the fact that Mr. Yu was born in China and has
18 relatives in China. But the fact that a defendant was born in another country does not
19 make him a flight risk. Indeed, if “alienage does not by itself ‘tip the balance either for or
20 against detention,’” nor can the birthplace of a United States citizen. *United States v.*
21 *Townsend*, 897 F.2d 989, 994 (9th Cir. 1990). Thus, the DA has offered no basis
22 whatsoever for deeming Mr. Yu a flight risk, and the bond conditions ordering him to
23 remain in his Los Angeles hotel room and tethered to an electronic monitoring device are
24 entirely unwarranted.

25

26

27 ¹² Kathleen Achtenberg, *Leading software provider Konnech creating up to 51 high-wage*
28 *jobs in East Lansing*, MICHIGAN ECONOMIC DEVELOPMENT CORP. (Dec. 9, 2021),
<https://www.michiganbusiness.org/press-releases/2021/12/software-provider-konnech-creating-51-high-wage-jobs-east-lansing/>.

1 **V. CONCLUSION**

2 For the reasons set forth above, Mr. Yu respectfully requests that the Court modify
3 his bail conditions to (i) permit release on his Own Recognizance; (ii) permit travel to
4 Michigan and California; and (iii) include the surrender of his passport.

5 Respectfully submitted,

6 Dated: October 21, 2022

**BIRD, MARELLA, BOXER, WOLPERT,
NESSIM, DROOKS, LINCENBERG & RHOW,
P.C.**

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9 By: Gary S. Lincenberg
Alexis A. Wiseley
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PROOF OF SERVICE

People v. Eugene Wei Yu
Case No. BA509784

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1875 Century Park East, 23rd Floor, Los Angeles, CA 90067-2561.

On October 21, 2022, I served the following document(s) described as:

DEFENDANT EUGENE WEI YU’S NOTICE OF MOTION AND MOTION FOR BAIL REVIEW

on the interested parties in this action as follows:

Eric Neff
Deputy District Attorney
Los Angeles County District Attorney
210 W. Temple Street, Ste 18000
Los Angeles, CA 90012
eneff@da.lacounty.gov

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the above-entitled document to be sent from e-mail address sramirez@birdmarella.com to the persons at the e-mail addresses listed in the attached Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 21, 2022, at Los Angeles, California.



Sandra Ramirez