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Qian SUN

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Qian SUN,

Petitioner-Plaintiff,

v.

Ernesto SANTACRUZ JR., Acting Field Office
Director of Los Angeles Office of Detention and
Removal, U.S. Immigrations and Customs
Enforcement; U.S. Department of Homeland
Security; Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement, U.S.
Department of Homeland Security; Kristi
NOEM, Secretary, U.S. Department of
Homeland Security; and Pamela BONDI,
Attorney General of the United States;

Respondents-Defendants.

Case No. 5:25-cv-02198

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF EX PARTE APPLICATION

In compliance with Local Rule of Civil Procedure 7-19, Petitioner Qian Sun states that Respondents-Defendants are represented by David M. Harris and Daniel Beck. Their contact information is:

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A memorandum of points and authorities, along with a proposed order, are submitted in support of this *ex parte* motion for a temporary restraining order, which is filed because Ms. Sun has an in person appointment with U.S. Immigration and Customs Enforcement (ICE) on August 27, 2025. Further, undersigned Counsel states that, on the afternoon of August 20, 2025, he emailed Mr. Harris and Mr. Beck regarding this case and motion, and also spoke with Mr. Beck over the phone regarding the same. Undersigned Counsel asked Mr. Beck whether he would contact ICE to obtain assurances that it does not intend to re-arrest and re-incarcerate Ms. Sun absent advance notice and a constitutionally compliant hearing as to whether her re-arrest and re-incarceration are warranted by clear and convincing evidence. Undersigned Counsel also emailed Mr. Beck on today's date to ask whether ICE had responded to provide assurances. Mr. Beck stated that they had not. During undersigned Counsel's phone call with Mr. Beck, he requested that Respondents-Defendants be provided one business day to respond to any motion for a temporary restraining order filed by Ms. Sun. Because this motion is being filed on Thursday, August 21, 2025, Mr. Beck requested that Respondents-Defendants be able to file a response by the end of the day on Friday, August 22, 2025.

Dated: August 21, 2025

Respectfully Submitted

/s/ Johnny Sinodis
Johnny Sinodis
Attorney for Ms. Sun

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner-Plaintiff hereby moves this Court for an order enjoining Respondents-Defendants U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-arresting Petitioner-Plaintiff Qian Sun until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because (1) there is clear and convincing evidence establishing that she is a danger to the community or a flight risk and (2) her removal from the United States is reasonably foreseeable (related to Claims 1-5 in the petition and complaint).

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the Declaration of Johnny Sinodis with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Ms. Sun raises that she warrants a temporary restraining order due to her weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing her unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden by clear and convincing evidence.

WHEREFORE, Ms. Sun prays that this Court grant her request for a temporary restraining order initially (and then subsequently convert it to a preliminary injunction) enjoining Respondents from re-incarcerating her unless and until she is afforded a hearing before a neutral decisionmaker on the question of whether her re-incarceration would be lawful. Ms. Sun is currently scheduled to appear for a check-in before the San Bernardino ICE Field Office on August 27, 2025, where Respondents likely intend to re-arrest and re-incarcerate even though (1) she is not a flight risk or danger to the community and (2) her removal is not reasonably foreseeable. The only mechanism to ensure that she is not unlawfully re-arrested in violation of the Immigration and Nationality Act (INA) and her right to due process is a temporary restraining

1 order from this Court.

2 Dated: August 21, 2025

Respectfully Submitted

3 /s/ Johnny Sinodis

4 Johnny Sinodis

5 Attorney for Ms. Sun

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Qian Sun, by and through undersigned counsel, hereby files this
3 motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department
4 of Homeland Security's (DHS), U.S. Immigration and Customs Enforcement (ICE) from re-
5 arresting her unless and until she is afforded notice and a hearing before a neutral decisionmaker
6 on the question of whether her release should be revoked and, if so, whether she must be re-
7 incarcerated because ICE establishes by clear and convincing evidence that (1) she is a danger to
8 the community or a flight risk and (2) her removal is not reasonably foreseeable. At any such
9 hearing, the neutral arbiter must consider whether, in lieu of incarceration, alternatives to
10 detention would mitigate any risk established by Respondents.

11 Ms. Sun moves for preliminary relief on her Claims 1-5, which relate to her right to notice
12 and a hearing prior to any re-detention by ICE ("Re-detention Claims"). At this time, she does
13 not move on Claim 6, which relates to the procedures which must be provided to her—under the
14 Immigration and Nationality Act (INA), the Convention Against Torture and Other Cruel,
15 Inhuman or Degrading Treatment or Punishment (Dec. 10, 1984), the Foreign Affairs Reform and
16 Restructuring Act of 1998 (FARRA), and due process—in the event that DHS were to attempt to
17 remove her to a yet unknown third country ("Third Country Removal Claim") because no
18 evidence exists that ICE has identified a third country or started any removal process to a third
19 country. In the future, if ICE does in fact intend to remove her to a third country, she would move
20 for relief on Claim 6, and any attempt by ICE to remove her to a third country absent
21 constitutionally adequate notice and an opportunity to present fear-based defenses to removal
22 would be unlawful.

23 Ms. Sun is a citizen and national of China who immigrated to the United States as a lawful
24 permanent resident (i.e., a green card holder) in 1994 when she was only nine years old. Years
25 later, after sustaining a controlled substance conviction under 21 U.S.C. §§ 952 and 960, ICE
26 initiated removal proceedings against her, and, although the Immigration Judge (IJ) ordered her
27 removal, the IJ also granted her deferral of removal under the Convention Against Torture (CAT).
28 Ms. Sun's CAT grant is based on the IJ's finding that she would be tortured in China due to her

1 Christian faith, her family's history of persecution, and her criminal history. DHS appealed the
2 IJ's decision to the Board of Immigration Appeals (BIA), and the BIA affirmed.

3 In June 2017, ICE released Ms. Sun from custody pursuant to a Form I-220B, Order of
4 Supervision, because the agency could not effectuate her removal to China, did not have a travel
5 document to remove her to a third country, and determined that she was neither a danger to the
6 community nor a flight risk. Ms. Sun has never been ordered removed to any third country or
7 notified of such potential removal, even though ICE is currently removing noncitizens to third
8 countries pursuant to a policy that purports to allow the agency to do so without affording the
9 noncitizen any prior notice or opportunity to present a fear-based claim in defense of their
10 deportation to a country they have never known.

11 Importantly, Ms. Sun was the victim of egregious and prolonged domestic abuse as a child
12 and at the hands of her much older then-boyfriend, who beat and choked her and eventually shot
13 at her with a gun when she attempted to leave the relationship. *See* Sinodis Decl. at Ex. H
14 (Declaration of Ms. Sun). As a result of this extreme trauma, Ms. Sun was separated from her
15 U.S. citizen son and suffered a severe lapse in judgment in an effort to earn sufficient money to
16 regain custody of her child, which is what resulted in her controlled substance offenses. *Id.* During
17 her prison sentence and since her release, Ms. Sun has demonstrated remarkable rehabilitation,
18 obtaining a college degree, becoming a successful IT Analyst, and building a strong support
19 network with her U.S. citizen partner and Christian community. *Id.*

20 Ms. Sun is scheduled to attend a check-in at the San Bernardino ICE Field Office on
21 August 27, 2025. In light of credible reports of ICE re-incarcerating individuals at their ICE
22 check-ins¹—including undersigned Counsel's knowledge of similarly situated clients of his firm
23 who were re-arrested and re-incarcerated without any notice or process—undersigned Counsel
24 contacted Respondents' counsel to request that ICE provide assurances that it would not re-arrest
25 Ms. Sun at her check-in. Sinodis Decl. ICE refused to provide assurances. *Id.*

26 Given that ICE has declined to provide assurances that it will not re-arrest Ms. Sun, in

27 ¹ *See, e.g.*, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some
28 overnight," CBS News (June 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>. See also

1 conjunction with the numerous credible reports of similarly situated noncitizens being arrested at
2 ICE check-in appointments—as well as undersigned Counsel’s own knowledge that similarly
3 situated clients of his firm were re-arrested and re-incarcerated without any notice or process at a
4 routine check-in—it is highly likely Ms. Sun will be arrested and incarcerated at her August 27
5 appointment, despite the fact that she is neither a flight risk nor a danger to the community and
6 her removal is not reasonably foreseeable. This is particularly true given that ICE has received
7 multiple directives to meet untenable daily arrest quotas that leave the agency no other option but
8 to arrest noncitizens whose incarceration is not necessary.² If Ms. Sun is arrested, she faces the
9 very real possibility of being transferred outside of California with little or no notice, far away
10 from her family and community and quite possibly to a third country to which she has absolutely
11 no connection whatsoever.

12 As a result of these circumstances, Ms. Sun presents several ways in which her rearrest
13 would be unlawful and must be enjoined:

14 First, when a noncitizen like Ms. Sun has been released from custody pursuant to a Form
15 I-220B, Order of Supervision, because removal to their country of origin is not possible, their re-
16 detention is limited by regulation, statute, and the constitution. By statute and regulation, only in
17 specific circumstances (that do not apply here) does ICE have the authority to re-detain a
18 noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability
19 of ICE to simply re-arrest someone following their release from detention is further limited by
20 the Due Process Clause of the Fifth Amendment because it is well-established that individuals
21 released from incarceration have a liberty interest in their freedom. That basic principle—that
22 individuals placed at liberty are entitled to process before the government imprisons them—has
23 particular force here, where Ms. Sun’s detention was *already* found to be unnecessary to serve its
24

25 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
28 <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

1 purpose. ICE previously found that she need not be incarcerated to prevent flight or to protect the
2 community, as evidenced by its decision to release her from custody and issue a Form I-220B,
3 Order of Supervision, and no circumstances have changed that would justify her re-arrest.
4 Accordingly, *prior to any re-arrest*, Ms. Sun must be provided notice and a hearing before a
5 neutral arbiter at which ICE bears the burden of justifying her re-incarceration is required because
6 clear and convincing evidence exists to demonstrate that (1) she is a flight risk or a danger to the
7 community and (2) her removal is reasonably foreseeable. During any such hearing, Ms. Sun
8 must be afforded the opportunity to present arguments as to why she should not be re-arrested
9 and re-incarcerated, and the neutral arbiter must consider whether, in lieu of detention,
10 alternatives to detention exist to mitigate any risk established by ICE.

11 Second, the Supreme Court of the United States has limited the potentially indefinite post-
12 removal order detention to a *maximum* of six months where removal is not reasonably foreseeable.
13 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In this instance, Ms. Sun has already spent four
14 months in custody following her order of removal; although she was ordered removed by an IJ
15 and granted deferral of removal under the CAT on February 13, 2017, ICE did not release her
16 from custody until June 13, 2017. Given that Ms. Sun cannot be removed to China given that she
17 has been granted CAT, and because ICE does not have a travel document for her now, her removal
18 remains not reasonably foreseeable. Therefore, any re-arrest would lead to indefinite and thus
19 unconstitutionally prolonged detention.

20 Ms. Sun meets the standard for a temporary restraining order. She will suffer immediate
21 and irreparable harm stemming from any unlawful re-arrest absent an order from this Court
22 enjoining the government from re-arresting her unless and until she receives a hearing before a
23 neutral arbiter where the government must bear the burden by clear and convincing evidence to
24 show that (1) she is a flight risk or danger to the community and (2) her removal is reasonably
25 foreseeable. Because holding federal agencies accountable to constitutional demands is in the
26 public interest, the balance of equities and public interest are also strongly in her favor.

27 **II. STATEMENT OF FACTS AND CASE**

28 Ms. Sun is citizen and national of China who entered the United States as a lawful

1 permanent resident at the age of nine. Sinodis Decl. at Ex. H (Declaration of Ms. Sun). She
2 currently lives in the Riverside area, and works as an IT Analyst for CJ Logistics, while running
3 a small business with her long-term U.S. citizen partner. *Id.* She is a devout Christian who is
4 deeply involved in her religious community and volunteers to help the unhoused in her area. *Id.*;
5 *id.* at Ex. I (Letters of Support).

6 Ms. Sun's childhood in the United States was marred by extreme domestic violence. *See*
7 *id.* Her father and stepmother frequently beat and humiliated her and deprived her of food. *Id.* On
8 one occasion, her father was arrested after a teacher noticed bruising and called the police. Ms.
9 Sun left home as a teenager to escape this abuse but ended up in a relationship with a much older
10 violent man. *Id.* While in that relationship, Ms. Sun gave birth to her U.S. citizen son when she
11 was only seventeen years old. Her abusive ex-partner became increasingly violent after their son
12 was born, including hitting her in the eye and slamming her against the bathtub. When Ms. Sun
13 tried to end the relationship, he shot at her with a gun and successfully shot someone who was
14 trying to help her. Ms. Sun cooperated in the ensuing law enforcement investigation and testified
15 against her ex-partner in court, leading to his conviction and sentence of more than twenty-five
16 years in prison. *Id.*

17 Lacking any financial and emotional support, Ms. Sun was separated from her young son.
18 *Id.* Desperate to make money so that she could regain custody of him, she experienced a serious
19 lapse in judgment and sustained a controlled substance related conviction for importation of
20 methamphetamine in violation of 21 U.S.C. §§ 952 and 960. She pleaded guilty and was sentenced
21 to seventy-eight months in prison. On January 23, 2017, upon completion of her criminal
22 sentence, ICE took custody of Ms. Sun for the purpose of pursuing her removal to China. *See*
23 Sinodis Decl. Ex. B (NTA). On February 13, 2017, an IJ found Ms. Sun would be tortured if
24 removed to China due to her Christian faith and family history of persecution, as well as her
25 criminal history. The IJ granted her protection from removal under the CAT. *Id.* at Ex. C (Order
26 Granting CAT). DHS appealed this decision to the BIA, which affirmed the IJ's order. *Id.* at Ex.
27 D (BIA Decision)

1 Then, on June 13, 2017, ICE released Ms. Sun from detention pursuant to a Form I-220B,
2 Order of Supervision (OSUP). Sinodis Decl. at Ex. E (Notice of Decision to Release); *see also*
3 *id.* at Ex. F (OSUP). ICE was legally prevented from removing her to China, where she would be
4 tortured, and had not secured a travel document to remove her to a third country. The OSUP sets
5 forth numerous restrictions on Ms. Sun's liberty, including that she appear for any and all in-
6 person appointments when instructed, not travel outside the state of California for more than
7 forty-eight hours without receiving approval from ICE, update her address and employment status
8 within forty-eight hours of any change, and that she assist ICE with obtaining any necessary travel
9 documents. *Id.*

10 For more than eight years, Ms. Sun has remained in full compliance with her OSUP and ICE
11 has not sought her re-detention. Ms. Sun has secured full-time employment, rebuilt her life, and
12 become a productive and well-respected member of the community. Sinodis Decl. She is not at
13 all the type of person for whom re-incarceration is required.

14 On September 25, 2024, Ms. Sun attended her last check-in appointment with ICE. At that
15 time, ICE scheduled her to appear again on August 27, 2025. *See id.* at Ex. G (OSUP Compliance).

16 On information and belief, on January 25, 2025, officials in the new Trump administration
17 directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office
18 was instructed to make seventy-five arrests per day.³

19 Multiple credible reports demonstrate that, in recent weeks and months, numerous
20 noncitizens in the San Bernardino Area, Los Angeles, and across the country who have appeared
21 as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.⁴ ICE has also

22
23 ³ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (Jan. 26, 2025), available
at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

24 ⁴ See *supra* n.2; "ICE arrests at L.A. courthouse met with alarm," *L.A. Times* (June 25, 2025),
<https://www.latimes.com/california/story/2025-06-25/ice-arrests-los-angeles-courthouse>; "ICE arrests at
25 Sacramento immigration courts raises fear among immigrant community," *KCRA* (June 3, 2025),
<https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405>;
26 "ICE confirms arrests made in South San Jose," *NBC Bay Area* (June 4, 2025),
<https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid Response Network, an
27 immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision
28 Appearance Program – for what are usually routine appointments to check on their immigration status. But the
immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and
apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including
3-year-old child, in San Bernardino, advocates say," *San Bernardino Chronicle* (June 5, 2025),

1 engaged in highly publicized arrests of individuals who presented no flight risk or danger, often
2 with no prior notice that anything regarding their status was amiss or problematic, whisking them
3 away to faraway detention centers without warning.⁵

4 Decisions issued by other courts in this District and the Northern and Eastern Districts of
5 California further corroborate that ICE is re-arresting and re-incarcerating individuals who are
6 not flight risks or dangers to the community, including when their removals from the United States
7 are not reasonably foreseeable. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-JC, Dkt. 10 (C.D.
8 Cal. July 28, 2025) (“the court has no information to suggest that Petitioner is a flight risk or a
9 danger to the public”); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D.
10 Cal. Aug. 14, 2025) (“The only changed circumstance the government cites is the reopening of
11 Petitioner’s Ninth Circuit case”); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2
12 (“Although Petitioner-Plaintiff informed the ICE officer that she has no right to return to either
13 country because she is stateless, the officer told Petitioner-Plaintiff that
14 ‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7;
15 *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d -
16 ---, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ---, 2025 WL 2084921, at *7; *Diaz v. Kaiser*,
17 No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F.
18 Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-
19 JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-
20 SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-
21 TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

22 On the afternoon of August 20, 2025, undersigned Counsel contacted the U.S. Attorney’s

23 <https://www.sfbayarea.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; “Cincinnati high
24 school graduate faces deportation after routine ICE check-in,” ABC News (June 9, 2025),
25 <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

26 ⁵ *See, e.g.,* McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
27 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
28 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University
PhD student detained by federal agents,” CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-detained-what-we-know/index.html> (Rumeyssa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
& Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
(Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

Office for the Central District of California to request assurances from ICE that it would not re-arrest and re-incarcerate Ms. Sun on August 27, 2025. Sinodis Decl. As of the time of filing, ICE has not provided any assurances. *Id.*

In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and the fact that ICE has not provided assurances that it will not re-arrest and re-incarcerate Ms. Sun, it is highly likely she will be arrested and incarcerated at her appointment. This is true even though Ms. Sun is neither a flight risk nor a danger to the community and despite her removal not being reasonably foreseeable. She faces the very real possibility of being re-incarcerated and transferred out of the District, far away from her family and community.

Intervention from this Court is therefore required to ensure that Ms. Sun is not (1) unlawfully re-arrested and re-incarcerated, (2) held in unjustified, prolonged, and indefinite custody, and (3) subjected to irreparable harm as a result.

III. LEGAL STANDARD

Ms. Sun is entitled to a temporary restraining order (and, subsequently, a preliminary injunction) if she establishes that she is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Ms. Sun does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if she raises “serious questions” as to the merits of her claims, the balance of hardships tips “sharply” in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Ms. Sun overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MS. SUN WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.

65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Ms. Sun is likely to be re-arrested absent any material change in circumstances and prior to receiving a hearing before a neutral adjudicator, in violation of her due process rights, without intervention by this Court. Ms. Sun will suffer irreparable injury if she is arrested and detained without due process and separated from her U.S. citizen partner and community.

Ms. Sun is likely to succeed on the merits of the claims set forth below. Any re-arrest absent notice and a hearing under the circumstances of this case—where ICE has not established that Ms. Sun is a flight risk or danger and that her removal is reasonably foreseeable—would be a clear violation of the INA, its implementing regulations, and due process. Alternatively, Ms. Sun at least raises “serious questions” going to the merits of her claims and establishes that the balance of hardships tips “sharply” in her favor, as detailed below.

1. Ms. Sun is likely to succeed on the merits of her claim that, in this case, the Constitution requires a hearing before a neutral adjudicator prior to any re-incarceration by ICE

Ms. Sun is likely to succeed on her claim that, in her particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-arresting her without first providing a pre-deprivation hearing before a neutral adjudicator where the government demonstrates by clear and convincing evidence that there has been a material change in circumstances such that she is now a danger or a flight risk and that her removal is reasonably foreseeable.

ICE’s power to re-arrest a noncitizen who is at liberty is constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process”). It is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles her to constitutional due process before she is re-incarcerated”). In

turn, to protect that interest, on the particular facts of Ms. Sun's case, due process requires notice and a hearing, *prior to any re-arrest*, at which she must be afforded the opportunity to advance her arguments as to why she should not be re-detained. Other courts in this District and in the Northern and Eastern District of California have agreed. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-JC, Dkt. 10 (C.D. Cal. July 28, 2025); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ---, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025); *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D. Tex. Aug. 3, 2025).

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Ms. Sun Has a Protected Liberty Interest in Her Release

Ms. Sun's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

Since June 2017, Ms. Sun exercised that freedom under ICE's Form I-220B, Order of Supervision. Sinodis Decl. at Ex. G (OSUP). She thus retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d ---, 2025 WL 2084921, at *3 ("even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings,

1 after that individual is released from custody she has a protected liberty interest in remaining out
2 of custody”).

3 Ms. Sun continued presenting herself before ICE for her regular check-in appointments
4 for the past seven years, where ICE did not seek to re-arrest her during this time. ICE instead gave
5 her a future date and time to appear again at regular intervals, which she did. *See Singh*, No. 1:25-
6 CV-00801-KES-SKO (HC), [2025 WL 1918679](#), at *2 (“DHS, at least implicitly, made a finding
7 that petitioner was not a flight risk when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627
8 (GBD), [2025 WL 1707737](#), at *3 & n.6 (S.D.N.Y. June 18, 2025)). For the past seven years, she
9 was also gainfully employed and worked hard to reconnect with loved ones while building a life
10 with her U.S. citizen partner. Sinodis Decl. at Exs. **.

11 Individuals—including noncitizens—released from incarceration have a liberty interest in
12 their freedom. *Id.* at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v.*
13 *INS*, [25 F.3d 841](#) (9th Cir. 1994) (noting that “[i]t is well-established that the due process clause
14 applies to protect immigrants”). This is further reinforced by *Morrissey*, where the Supreme Court
15 recognized the protect liberty interest under the Due Process Clause of a criminal detainee who
16 was released on parole from incarceration. [408 U.S. at 481-82](#). The Court noted that, “subject to
17 the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family
18 and friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court
19 further noted that “the parolee has relied on at least an implicit promise that parole will be revoked
20 only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a
21 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
22 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever
23 name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.”
24 *Morrissey*, [408 U.S. at 482](#).

25 This basic principle—that individuals have a liberty interest in their conditional release—
26 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
27 *See, e.g., Young*, [520 U.S. at 152](#) (holding that individuals placed in a pre-parole program created
28 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process);

1 *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a
2 protected liberty interest requiring pre-deprivation process). As the First Circuit has explained,
3 when analyzing the issue of whether a specific conditional release rises to the level of a protected
4 liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in
5 the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
6 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation
7 omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a
8 person who is in fact free of physical confinement—even if that freedom is lawfully revocable—
9 has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”)
10 (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

11 In fact, it is well-established that an individual maintains a protectable liberty interest even
12 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
13 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
14 considerations support the notion that an inmate released on parole by mistake, because she was
15 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
16 the mistaken release was not her fault, and she had appropriately adjusted to society, so it “would
17 be inconsistent with fundamental principles of liberty and justice” to return her to prison) (internal
18 quotation marks and citation omitted).

19 Here, when this Court “compar[es] the specific conditional release in [Ms. Sun’s case],
20 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly
21 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Ms. Sun’s release “enables
22 her to do a wide range of things open to persons” who have never been in custody or convicted
23 of any crime, including to live at home, work, and “be with family and friends and to form the
24 other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. And, unlike in these
25 Supreme Court cases, Ms. Sun is not a criminal detainee but a civil detainee and thus the due
26 process considerations of her liberty should be even weightier than the courts have already found
27 apply in the criminal context. “[D]ecisions defining the constitutional rights of prisoners establish
28 a *floor* for the constitutional rights of [noncitizens in immigration custody],” who are “most

1 decidedly entitled to *more* considerate treatment than those who are criminally
2 detained.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5
3 (D. Ariz. Nov. 18, 2016) *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up)
4 (emphasis added).

5 Ms. Sun has complied with all conditions of release for over eight years. During that time,
6 she has focused on rebuilding her life, including by reconnecting with family and securing
7 employment. Precedent from the Supreme Court and the Ninth Circuit make clear that she has a
8 strong liberty interest in her continued release from detention.

9 **b. Ms. Sun’s Liberty Interest Mandates a Hearing Before**
10 **any Re-Arrest and Revocation of Release**

11 Ms. Sun asserts that, here, (1) where her detention would be civil, (2) where she has been
12 at liberty for eight years, during which time she has complied with all conditions of release, (3)
13 where no change in circumstances exist that would justify her detention, and (4) where the only
14 circumstance that has changed is ICE’s move to arrest as many people as possible because of the
15 new administration, due process mandates that she receive notice and a hearing before a neutral
16 adjudicator *prior* to any re-arrest.

17 “Adequate, or due, process depends upon the nature of the interest affected. The more
18 important the interest and the greater the effect of its impairment, the greater the procedural
19 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
20 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
21 “balance [Ms. Sun’s] liberty interest against the [government’s] interest in the efficient
22 administration of” its immigration laws in order to determine what process she is owed to ensure
23 that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth
24 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
25 “first, the private interest that will be affected by the official action; second, the risk of an
26 erroneous deprivation of such interest through the procedures used, and the probative value, if
27 any, of additional or substitute procedural safeguards; and finally the government’s interest,
28 including the function involved and the fiscal and administrative burdens that the additional or

1 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
2 *Eldridge*, 424 U.S. 319, 335 (1976)).

3 The Supreme Court “usually has held that the Constitution requires some kind of a hearing
4 *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
5 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
6 only remedies the State could be expected to provide” can post-deprivation process satisfy the
7 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one of the
8 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
9 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally
10 to do the impossible by providing predeprivation process,” can the government avoid providing
11 pre-deprivation process. *Id.*

12 Because, in this case, the provision of a pre-deprivation hearing is both possible and
13 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Ms. Sun
14 with notice and a hearing *prior* to any re-incarceration and revocation of her release. *See*
15 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
16 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
17 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
18 proceedings may not constitutionally be held in jail pending the determination as to whether they
19 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Ms.
20 Sun’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

21 **i. Ms. Sun’s Private Interest in Her Liberty is**
22 **Profound**

23 Under *Morrissey* and its progeny, individuals conditionally released from serving a
24 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
25 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
26 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles her to
27 constitutional due process before she is re-incarcerated—apply with even greater force to
28 individuals like Ms. Sun, who have been released pending civil removal proceedings, rather than

1 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
2 conviction. Parolees and probationers have a diminished liberty interest given their underlying
3 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
4 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
5 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
6 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
7 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Ms. Sun retains a truly weighty liberty interest
8 even though she is under conditional release.

9 What is at stake in this case for Ms. Sun is one of the most profound individual interests
10 recognized by our legal system: whether ICE may unilaterally nullify a prior release order and be
11 able to take away her physical freedom, i.e., her “constitutionally protected interest in avoiding
12 physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation
13 omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by
14 the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533
15 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms
16 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”);
17 *Cooper v. Oklahoma*, 517 U.S. 348 (1996). Thus, it is clear that there is a profound private interest
18 at stake in this case, which must be weighed heavily when determining what process she is owed
19 under the Constitution. *See Mathews*, 424 U.S. at 334-35.

20 **ii. DHS’s Interest in Re-Incarcerating Ms. Sun**
21 **Without a Hearing is Low and the Burden on**
22 **DHS to Refrain from Re-Arresting Her Unless**
23 **and Until She is Provided a Hearing is Minimal**

24 The government’s interest in detaining Ms. Sun without a due process hearing is low, and
25 when weighed against her significant private interest in her liberty, the scale tips sharply in favor
26 of enjoining Respondents from re-arresting her unless and until the government demonstrates by
27 clear and convincing evidence that (1) she is a flight risk or danger to the community and (2) her
28 removal is reasonably foreseeable. It becomes abundantly clear that the *Mathews* test favors Ms.
Sun when the Court considers that the process she seeks—notice and a hearing regarding whether

1 her order of release should be revoked because DHS can demonstrate not only that her removal
2 is reasonably foreseeable but that she is also a danger or a flight risk—is a standard course of
3 action for the government. Providing Ms. Sun with a hearing before this Court (or a neutral
4 decisionmaker) would impose only a *de minimis* burden on the government, because DHS
5 routinely provides this sort of review to individuals like Ms. Sun. 8 C.F.R. § 241.4(e)-(f).

6 As immigration detention is civil, it can have no punitive purpose. The government’s only
7 interests in holding an individual in immigration detention can be to prevent danger to the
8 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*,
9 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for
10 detaining Ms. Sun in August 2025 when she has lived at liberty complying with the conditions of
11 her release since June 2017 and circumstances have not changed since then.

12 In fact, Ms. Sun has always had a removal order since her release from ICE custody in
13 June 2017 and has demonstrated that she is not a flight risk because she has continued to appear
14 before ICE on a regular basis for every appointment that has been scheduled. *See Morrissey*, 408
15 U.S. at 482 (“It is not sophistic to attach greater importance to a person’s justifiable reliance in
16 maintaining her conditional freedom so long as she abides by the conditions on her release, than
17 to her mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut*
18 *Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971); *Pinchi*, --- F.Supp.3d ----, 2025 WL
19 2084921, at *3 (“the government’s decision to release an individual from custody creates ‘an
20 implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if
21 [they] fail[] to live up to the ... conditions [of release].’”) (quoting *Morrissey*, 408 U.S. at 482).

22 As to flight risk, Ms. Sun’s post-release conduct in the form of full compliance with her
23 check-in requirements further confirms that she is not a flight risk and that she remains likely to
24 present himself at any future ICE appearances, as she always has done. *Zadvydas*, 533 U.S. at 699
25 (ICE’s interest is to “assure [Ms. Sun’s] presence at the moment of removal.”). DHS’s interest in
26 detaining her at this time is therefore low. That ICE has a new policy to make a minimum number
27 of arrests each day under the new administration does not constitute a material change in
28

1 circumstances or increase the government's interest in detaining her.⁶ See *Zakzouk*, No. 25-CV-
2 06254 (RFL), 2025 WL 2097470, *2 ("Although Petitioner-Plaintiff informed the ICE officer
3 that she has no right to return to either country because she is stateless, the officer told Petitioner-
4 Plaintiff that 'things are different now.'"); *Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL
5 1918679, at *2 ("The law requires a change in relevant facts, not just a change in [the
6 government's] attitude") (internal quotations omitted).

7 Moreover, the "fiscal and administrative burdens" that a pre-deprivation hearing would
8 impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-35. Ms. Sun does not seek a
9 unique or expensive form of process, but rather a routine review regarding whether her release
10 should be revoked and whether she should be re-incarcerated.

11 In the alternative, providing Ms. Sun with a hearing before this Court (or a neutral
12 decisionmaker) is a routine procedure that the government provides to those in immigration jails
13 on a daily basis. At that hearing, the Court would have the opportunity to determine whether
14 circumstances have changed sufficiently to require her release to be revoked. But there is no
15 justifiable reason to re-incarcerate Ms. Sun prior to such a hearing taking place. As the Supreme
16 Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to
17 return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact
18 she has failed to abide by the conditions of her parole . . . the State has no interest in revoking
19 parole without some informal procedural guarantees." 408 U.S. at 483.

20 Enjoining Ms. Sun's re-arrest until ICE (1) moves for a re-determination before a neutral
21 decisionmaker and (2) demonstrates by clear and convincing evidence that she is a flight risk or
22 danger to the community and that her removal is reasonably foreseeable is far *less* costly and
23 burdensome for DHS than keeping her detained. As the Ninth Circuit noted in 2017, which
24

25 ⁶ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available
26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's
27 Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025),
28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White
House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested
more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,"
reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

1 remains true today, “[t]he costs to the public of immigration detention are ‘staggering’: \$158 each
2 day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

3 **iii. Without a Due Process Hearing Prior to Any**
4 **Re-Arrest, the Risk of an Erroneous**
5 **Deprivation of Liberty is High, and Process in**
6 **the Form of a Constitutionally Compliant**
7 **Hearing Where ICE Carries the Burden**
8 **Would Decrease That Risk**

9 Providing Ms. Sun a pre-deprivation hearing would decrease the risk of her being
10 erroneously deprived of her liberty. Before she can be lawfully detained, she must be provided
11 with a hearing before a neutral adjudicator at which the government is held to show that there has
12 been sufficiently changed circumstances such that she should be detained because clear and
13 convincing evidence exists to establish that she is a danger to the community or a flight risk and
14 that her removal is reasonably foreseeable.

15 Under ICE’s process for custody determination—which affords Ms. Sun no process
16 whatsoever—ICE can simply re-detain her at any point if the agency desires to do so. The risk
17 that Ms. Sun will be erroneously deprived of her liberty is high if ICE is permitted to re-
18 incarcerate her after making a unilateral decision to re-arrest her. Pursuant to 8 C.F.R. § 241.4(l),
19 revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner.
20 Thus, the regulations permit ICE to unilaterally revoke a release determination without oversight
21 of any kind—even if, as here, the individual has been living at liberty for years and no
22 circumstances justify their arrest. After re-arrest, ICE makes its own, one-sided custody
23 determination and can decide whether the agency wants to hold Ms. Sun without a bond or grant
24 her release again. 8 C.F.R. § 241.4(e)-(f).

25 By contrast, the procedure Ms. Sun seeks—a hearing in front of a neutral adjudicator at
26 which DHS must prove that her re-incarceration would not be indefinite and clear and convincing
27 evidence shows that circumstances have changed to justify her detention *before* any re-arrest—is
28 much more likely to produce accurate determinations regarding factual disputes, such as whether
a certain occurrence constitutes a “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902
F.2d 1375, 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses

1 and assessment of conditions not subject to measurement” are at issue, the “risk of error is
2 considerable when just determinations are made after hearing only one side”). “A neutral judge
3 is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th
4 Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).
5 The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews*
6 can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
7 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

8 Due process also requires consideration of alternatives to detention at any custody
9 redetermination hearing that may occur. The primary purpose of immigration detention is to
10 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
11 Detention is not reasonably related to this purpose if there are alternatives to detention that could
12 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
13 detention must be considered in determining whether Ms. Sun’s re-incarceration is warranted.

14 **2. Ms. Sun is likely to succeed on the merits of her claim that any re-**
15 **detention would be indefinite and thus unconstitutional, in**
16 **violation of clear Supreme Court precedent**

17 Ms. Sun is likely to succeed on her claim that, in her particular circumstances, the Due
18 Process Clause of the Constitution prevents Respondents from re-detaining her because she
19 cannot be deported to China and she would therefore be subjected to unconstitutional indefinite
20 detention.

21 Following a final order of removal, ICE is directed by statute to detain an individual for
22 ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety-day period, also
23 known as “the removal period,” generally commences as soon as a removal order becomes
24 administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

25 In 2017, ICE did in fact detain Ms. Sun during that removal period, following her
26 administratively final order of removal. Following the IJ’s removal order, and grant of deferral of
27 removal under the CAT, Ms. Sun remained in ICE custody for another four months, until after
28 Ms. Sun defeated DHS’s appeal of her grant of CAT protection at the BIA. Sinodis Decl. at Exs.
**.

1 If ICE fails to remove an individual during the ninety-day removal period, the law requires
2 ICE to release the individual under conditions of supervision, including periodic reporting. 8
3 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending
4 removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE
5 “may” detain an individual beyond ninety days if the individual was ordered removed on criminal
6 grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s
7 authority to detain an individual beyond the removal period under such circumstances is not
8 boundless. Rather, it is constrained by the constitutional requirement that detention “bear a
9 reasonable relationship to the purpose for which the individual [was] committed.” *Zadvydas v.*
10 *Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention
11 statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to
12 its purpose if removal cannot be effectuated. *Id.* at 697.

13 The Supreme Court has addressed the statute’s silence regarding the limits on post-final
14 order detention and has definitively held that such detention has the potential to be indefinite and
15 such indefinite detention would be unconstitutional. Thus, there must be constitutional limits on
16 post-final order detention. Specifically, the Supreme Court held that post-final order detention is
17 only authorized for a “period reasonably necessary to secure removal,” a period that the Court
18 determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a
19 detainee provides “good reason” to believe that her or her removal is not significantly likely in
20 the reasonably foreseeable future, “the Government must respond with evidence sufficient to
21 rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be released.

22 In light of the Supreme Court limitations imposed on the statutory scheme, the government
23 updated the regulations to be consistent with those constitutionally required limitations on
24 indefinite detention. Under those regulations, detainees are entitled to release even before six
25 months of detention, if removal is not reasonably foreseeable. See 8 C.F.R. § 241.13(b)(1)
26 (authorizing release after ninety days where removal not reasonably foreseeable). Moreover,
27 under the Supreme Court’s constitutional limitations on indefinite detention, as the period of post-
28 final-order detention grows, what counts as “reasonably foreseeable” must conversely shrink.

1 *Zadvydas*, 533 U.S. at 701.

2 In this case. Ms. Sun was released from ICE detention after the conclusion of the removal
3 period, specifically because her removal was not foreseeable at all given that the IJ granted her
4 CAT. Sinodis Decl. at Ex. C. And nothing has changed since her release in June 2017. If ICE is
5 permitted re-detain her now, under the possibility she might be removed some day simply because
6 she has a removal order, then she very likely will be detained in ICE custody essentially forever.

7 In short, Ms. Sun's re-detention would be unconstitutional because it would be indefinite.
8 This is particularly true given that 1) Ms. Sun cannot be removed to China because she has been
9 granted CAT, and 2) there is no evidence that ICE would be able to obtain a travel document to
10 remove her to a third country. Respondents have acknowledged in cases with similarly situated
11 petitioners that they did not obtain travel documents before arresting the noncitizen. *See, e.g.,*
12 *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *1 (government had no travel
13 document for petitioner); *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *1 (same).
14 Thus, Ms. Sun's removal is not reasonably foreseeable in this case, and the government has not
15 provided her with notice, evidence, or an opportunity to be heard on this issue either. Her re-
16 incarceration without any reasonably foreseeable end point would thus be unconstitutionally
17 prolonged in violation of clear Supreme Court precedent. *Id.* Moreover, Ms. Sun has already
18 served four months of post-order detention before she was released in June 2017, and therefore
19 she may not—and under these circumstances, *must* not—be re-detained. 8 C.F.R. § 241.13(b)(1);
20 *see also Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-
21 01757-DC-JDP, 2025 WL 1993735, at *7; *Yang v. Kaiser et al.*, 2:25-cv-02205-DAD-AC (HC)
22 (E.D. Cal. Aug. 21, 2025), *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal.
23 Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3, 2025);
24 *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *1; *Cordon-Salguero v. Noem*, No.
25 1:25-cv-01626-GLR (D. Md. June 18, 2025) (ordering release from physical custody under
26 *Zadvydas*); *Tadros v. Noem*, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025) (same).

27 **3. Ms. Sun is likely to succeed on the merits of her claim that any re-**
28 **arrest would be a violation of the regulations**

1 Ms. Sun's re-arrest would be separately unlawful because the controlling regulations
2 specify the circumstances that permit her re-incarceration, and Respondents have not established
3 that circumstances have changed regarding the foreseeability of her removal which is required
4 under those regulations. By regulation, non-citizens with final removal orders who are released
5 from detention after a post-order custody review are subject to an OSUP, which is documented
6 on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an order of
7 supervision, the regulations further specify that ICE cannot revoke such an order without cause
8 or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

9 In this case, Ms. Sun was released on a Form I-220B, Order of Supervision, in June 2017.
10 Sinodis Decl. at Ex. G (OSUP). It specified the conditions imposed on her, and it is uncontested
11 that she complied with all of those conditions. *Id.*

12 Under the regulations, ICE has the authority to re-arrest a noncitizen previously ordered
13 removed *only* in specific circumstances, such as where an individual violates any condition of
14 release or there are changed circumstances regarding the reasonable foreseeability of removal. 8
15 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(j). Neither criterion is met here, as
16 Ms. Sun has fully complied with her Form I-220B and there is no evidence that ICE has obtained
17 a travel document for her. Any re-arrest would therefore be unlawful.

18 * * *

19 As the above-cited authorities show, Ms. Sun is likely to succeed on her claim that the
20 Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-
21 arrest and re-incarceration by ICE. Alternatively, at the very least, she clearly raises "serious
22 questions" regarding this issue, thus also meriting a TRO pursuant to the Ninth Circuit's sliding-
23 scale approach. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

24 **4. Ms. Sun will Suffer Irreparable Harm Absent Injunctive Relief**

25 Ms. Sun will suffer irreparable harm were she to be deprived of her liberty and subjected
26 to unlawful incarceration by DHS without being provided the constitutionally adequate process
27 that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in
28 "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme

1 Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the
2 individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v.*
3 *Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743
4 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms
5 the irreparable harms imposed on anyone subject to immigration detention” including “subpar
6 medical and psychiatric care in ICE detention facilities, the economic burdens imposed on
7 detainees and their families as a result of detention, and the collateral harms to children of
8 detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. Finally, the government itself
9 has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of
10 Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in
11 Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety
12 standards; staffing shortages affecting the level of care detainees received for suicide watch, and
13 detainees being held in administrative segregation in unauthorized restraints, without being
14 allowed time outside their cell, and with no documentation that they were provided health care or
15 three meals a day).⁷

16 Ms. Sun has been out of ICE custody for over eight years. During that time, she has
17 worked hard to establish a stable life for herself and rebuild her life. Sinodis Decl. at Ex. H
18 (Declaration of Ms. Sun). She has graduated with an associate’s degree, been gainfully employed
19 as an IT Analyst, built a stable relationship with her U.S. citizen partner, and become deeply
20 involved in her faith community, including volunteering to help the unhoused. *Id.* If she were
21 incarcerated, she would likely lose her job and her residence, as she could not work or pay her
22 bills from detention. Detention would irreparably harm not only Ms. Sun, but also her community.

23 It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes
24 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
25 *Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Ms.
26 Sun from suffering irreparable harm by remaining in unlawful and unjust detention.

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28 ⁷ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed August 20, 2025).

1 **5. The Balance of Equities and the Public Interest Favor Granting**
2 **the Temporary Restraining Order**

3 First, the balance of hardships strongly favors Ms. Sun. The government cannot suffer
4 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
5 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed
6 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
7 government cannot allege harm arising from a temporary restraining order or preliminary
8 injunction ordering it to comply with the Constitution.

9 Further, any burden imposed by requiring DHS to refrain from re-arresting Ms. Sun unless
10 and until she is provided a hearing before a neutral is both *de minimis* and clearly outweighed by
11 the substantial harm she will suffer as if she is detained. *See Lopez v. Heckler*, 713 F.2d 1432,
12 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons,
13 even though the expenditure of governmental funds is required.”);

14 Finally, a temporary restraining order is in the public interest. First and most importantly,
15 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the
16 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
17 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
18 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the
19 government would effectively be granted permission to detain Ms. Sun in violation of the
20 requirements of Due Process. “The public interest and the balance of the equities favor
21 ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at
22 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public
23 interest benefits from an injunction that ensures that individuals are not deprived of their liberty
24 and held in immigration detention because of bonds established by a likely unconstitutional
25 process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
26 interest concerns are implicated when a constitutional right has been violated, because all citizens
27 have a stake in upholding the Constitution.”).

28 **V. CONCLUSION**

 For all the above reasons, this Court should find that Ms. Sun warrants a temporary

1 restraining order and a preliminary injunction ordering that Respondents refrain from re-arresting
2 her unless and until she is afforded a hearing before a neutral adjudicator on whether revocation
3 of her release is justified by clear and convincing evidence that (1) she is a danger to the
4 community or a flight risk and (2) her removal is reasonably foreseeable.

5 Dated: August 21, 2025

Respectfully submitted,

6 /s/ Johnny Sinodis

7 Johnny Sinodis

8 Marie Vincent

9 Attorneys for Ms. Sun
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