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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-2198

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

1. Petitioner, Qian Sun, by and through undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to (1) prevent the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from returning her to an immigration jail without first providing her a due process hearing where the government bears the burden to demonstrate to a neutral adjudicator that her custody is justified by clear and convincing evidence because she is a flight risk or danger to the community and her removal is reasonably foreseeable, and (2) prevent DHS from deporting her to a third country without advance notice and an opportunity to seek fear-based relief.

2. Ms. Sun is a citizen and national of China who immigrated to the United States as a lawful permanent resident in 1994 at the age of nine. *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. A. She subsequently sustained a conviction that led ICE to initiate removal proceedings against her during which ICE sought her removal to China. In February 2017, however, an Immigration Judge (IJ) granted her protection under the Convention Against Torture (CAT), thereby preventing her removal to China based on a finding that she would be tortured there due to her Christian faith, family history of persecution, and criminal history. *Id.* at Ex. C (IJ Order Granting CAT). In June 2017, ICE released Ms. Sun from custody pursuant to a Form I-220B, Order of Supervision (OSUP), which she has fully complied with for the past eight years. *Id.* at Ex. F (OSUP).

3. Since being released from ICE custody in June 2017, Ms. Sun has exercised her right to liberty. She continues to lawfully reside and work in the United States, and she plays an integral role in the life of her U.S. citizen partner, elderly lawful permanent resident father, and other U.S. citizen family members. *Id.* at Ex. H (Declaration of Ms. Sun); *id.* at Ex. I (Letters of Support). She is also a very committed Christian who regularly attends church services and volunteers at donation drives and events to help unhoused people in her area. *Id.*

4. Ms. Sun's next in-person appointment with ICE is scheduled for August 27, 2025. *Id.* at Ex. G (OSUP). As will be more fully explained below, ICE has refused to provide assurances that it will not re-arrest and re-incarcerate Ms. Sun or seek to remove her to a third country on

1 August 27, 2025, as DHS's current policy purports to permit. *See* Sinodis Decl. She faces the
2 very real possibility of being re-arrested and re-incarcerated even though she is not a flight risk
3 or danger to the community, and even though her removal for the United States is not reasonably
4 foreseeable. As stated above, she cannot be removed to China because an IJ found—and the
5 Board of Immigration Appeals (BIA) later affirmed—that she would be tortured if returned there.
6 DHS also lacks a travel document that would facilitate her deportation to anywhere else in the
7 world.

8 5. To be clear, Ms. Sun has never been ordered removed to any third country or notified of
9 such potential removal. Yet, given the Supreme Court of the United States' decision on June 23,
10 2025, in *U.S. Department of Homeland Security, et al. v. D.V.D., et al.*, No. 24A1153, 2025 WL
11 1732103 (June 23, 2025), which stayed the nationwide injunction that had precluded the
12 government from removing noncitizens to third countries without notice and an opportunity to
13 seek fear-based relief, ICE appears emboldened and intent to implement its campaign to send
14 noncitizens to far corners of the planet—places they have absolutely no connection to
15 whatsoever—in violation of clear statutory obligations set forth in the Immigration and
16 Nationality Act (INA), a binding treaty, and due process. In the absence of the nationwide
17 injunction, individual lawsuits like Ms. Sun's are the only method to challenge the illegal third-
18 country removals.

19 6. In recent weeks, individuals in identical or substantially similar circumstances as Ms.
20 Sun have been re-arrested and re-incarcerated absent notice and a hearing and even though ICE
21 could not (and still cannot) physically remove them from the country, resulting in district courts
22 granting them habeas and other relief. *See, e.g., Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025
23 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025) (noncitizen with CAT protection unlikely to be
24 removed to third country in foreseeable future because he first must receive the opportunity to
25 present a fear-based claim as to that country); *Zakzouk v. Becerra*, No. 25-CV-06254 (RFL),
26 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) (stateless Palestinian on OSUP likely to be
27 re-arrested despite no likelihood of removal); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP,
28 2025 WL 1993771, at *1 (E.D. Cal. July 16, 2025) (Vietnamese national on OSUP rearrested

1 even though government had not obtained travel document); *Phan v. Becerra*, No. 2:25-CV-
2 01757-DC-JDP, 2025 WL 1993735, at *1 (E.D. Cal. July 16, 2025) (same).¹

3 7. By statute and regulation, ICE has the authority to re-detain a noncitizen previously
4 ordered removed only in specific circumstances, including where an individual violates any
5 condition of release or the individual's conduct demonstrates that release is no longer
6 appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed
7 by the Due Process Clause because it is well-established that individuals released from
8 incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the
9 particular facts of Ms. Sun's case, due process requires notice and a hearing, *prior to any re-*
10 *arrest*, at which she would be afforded the opportunity to advance her arguments as to why she
11 should not be re-detained.

12 8. Here, Respondents created a reasonable expectation that Ms. Sun would be permitted to
13 live and work in the United States without being subject to arbitrary arrest and removal. In
14 addition to being granted CAT protection, the OSUP provided to her by ICE enables her to
15 continue lawfully residing and working in the United States. This reasonable expectation creates
16 constitutionally protected liberty and property interests. *Perry v. Sindermann*, 408 U.S. 593,
17 601-03 (1972) (reliance on policies and practices may establish a legitimate claim of entitlement
18 to a constitutionally-protected interest); *see also Texas v. United States*, 809 F.3d 134, 174
19 (2015), affirmed by an equally divided court, 136 S. Ct. 2271 (2016) (explaining that "DACA
20 involve[s] issuing benefits" to certain applicants). These benefits are entitled to constitutional
21 protections no matter how they may be characterized by Respondents. *See, e.g., Newman v.*
22 *Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) ("[T]he identification of property interests
23 under constitutional law turns on the substance of the interest recognized, not the name given
24 that interest by the state or other independent source.") (internal quotations omitted).

25 9. Further, the Supreme Court has limited the potentially indefinite post-removal order
26 detention to a maximum of six months when removal is not reasonably foreseeable. *Zadvydas v.*

27 ¹ *See also* "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>.

1 *Davis*, 533 U.S. 678, 701 (2001). Because ICE does not have a travel document for Ms. Sun,
2 and ICE has not provided her with notice, evidence, or an opportunity to be heard as to any fear-
3 based claim that she would present regarding her potential removal to a third country, her
4 removal is not reasonably foreseeable. Her re-incarceration without any reasonably foreseeable
5 end point would therefore be unconstitutionally prolonged, in violation of clear Supreme Court
6 precedent.

7 10. The basic principle that individuals placed at liberty are entitled to process before the
8 government imprisons them has particular force here, where Ms. Sun was *already* previously
9 released from ICE detention eight years ago, after which she began to rebuild her life, including
10 by securing employment. Under these circumstances, ICE is required to afford her the
11 opportunity to advance arguments in favor of her freedom before robbing her of her liberty. She
12 must therefore not be re-detained unless and until ICE proves to a neutral arbiter that (1) her
13 detention is necessary because there has been a material change in circumstances establishing
14 that she is a flight risk or a danger to the community and (2) that her removal is reasonably
15 foreseeable. Numerous federal district courts in the Northern, Eastern, and Central Districts of
16 California have already ordered similar relief. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-
17 JC, Dkt. 10 (C.D. Cal. July 28, 2025); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-
18 JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470,
19 at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-
20 DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ---, 2025 WL
21 1983677, at *10 (N.D. Cal. July 17, 2025); *Pinchi v. Noem*, --- F.Supp.3d ---, 2025 WL
22 2084921, at *7 (N.D. Cal. July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL
23 2243616, at *7 (N.D. Cal. Aug. 6, 2025); *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt.
24 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex.
25 Aug. 3, 2025).

26 11. Additionally, under the INA, if ICE intends to attempt to remove Ms. Sun to a third
27 country, ICE *must* first assert a basis under 8 U.S.C. § 1231(b)(2)(C) and ICE *must* provide her
28 with sufficient notice and an opportunity to respond and apply for fear-based relief as to that

1 country, in compliance with the INA, due process, and the binding international treaty: The
2 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²
3 Currently, DHS has a policy of removing or seeking to remove individuals to third countries
4 without first providing constitutionally adequate notice of third country removal, or any
5 meaningful opportunity to contest that removal if the individual has a fear of persecution or
6 torture in that country. *See* Sinodis Decl. at Ex. J (DHS Policy Regarding Third Country
7 Removal). As stated above, the U.S. District Court for the District of Massachusetts in *D.V.D.*
8 previously issued a nationwide preliminary injunction blocking such third country removals
9 without notice and a meaningful opportunity to apply for relief under the CAT, in recognition
10 that the government's policy violates due process and the United States' obligations under the
11 CAT. The U.S. Supreme Court has since granted the government's motion to stay the injunction
12 on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. --- (June 27, 2025),
13 limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by
14 an opinion, signals only disagreement with the nature, and not the substance, of the nationwide
15 preliminary injunction.

16 12. In this individual habeas petition and complaint for declaratory and injunctive relief, Ms.
17 Sun submits that she cannot be removed to any third country unless she is first provided with
18 adequate notice and a meaningful opportunity to apply for protection under the CAT. Other
19 federal district courts have already issued similar relief. *See Vaskanyan v. Janecka*, No. 5:25-
20 CV-01475-MRA-AS, 2025 WL 2014208, at *9 (C.D. Cal. June 25, 2025); *Hoac*, No. 2:25-CV-
21 01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL
22 1993735, at *7; *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4 (W.D.
23 Wash. June 30, 2025); *Delkash v. Noem*, No. 5:25-cv-01675-HDV-AGRx (C.D. Cal. Jul. 14,
24 2025); *Ortega v. Kaiser*, No. 25-cv-5259 (N.D. Cal. Jun. 26, 2025).

25 CUSTODY

26
27 ² United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
28 (Dec. 10, 1984), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>; *see also* Foreign Affairs Reform and Restructuring Act of 1998 (FARRA).

1 13. Ms. Sun is currently released from custody on an OSUP issued by ICE that sets forth
2 numerous restrictions on her liberty, including the requirement that she report to ICE whenever
3 instructed. Such stringent requirements “impose[] conditions which significantly confine and
4 restrain her freedom; this is enough to keep her in the ‘custody’ of [the DHS] within the meaning
5 of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also*
6 *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (“*Rodriguez I*”) (holding that comparable supervision
7 requirements constitute “custody” sufficient to support habeas jurisdiction).

8 JURISDICTION

9 14. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et
10 seq., the regulations implementing the INA, the Foreign Affairs Reform and Restructuring Act
11 of 1998 (FARRA), Pub. L. No. 105–277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–
12 822 (1998) (codified as Note to 8 U.S.C. § 1231), the regulations implementing the FARRA, the
13 Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.; and 5 U.S.C. § 552 et. seq.

14 15. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
15 federal question jurisdiction; 5 U.S.C. § 701, et seq., the Administrative Procedure Act; 28
16 U.S.C. § 1651, the All Writs Act; 28 U.S.C. § 2241, et seq., habeas corpus; 28 U.S.C. § 2201,
17 the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United States Constitution (Suspension
18 Clause); Art. 3 of the United States Constitution; and the common law.

19 16. This Court may grant relief pursuant to 28 U.S.C. § 2241; the Declaratory Judgment Act,
20 28 U.S.C. § 2201 et seq.; and the All Writs Act, 28 U.S.C. § 1651 to protect Ms. Sun’s rights
21 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
22 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
23 a writ of habeas corpus. *See generally INS v. St. Cyr*, 533 U.S. 289 (2001); *Zadvydas*, 533 U.S.
24 678.

25 REQUIREMENTS OF 28 U.S.C. § 2243

26 17. The Court must grant the petition for writ of habeas corpus or issue an order to show
27 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
28 § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three*

1 *days unless for good cause additional time, not exceeding twenty days, is allowed.” Id.* (emphasis
2 added).

3 18. Courts have long recognized the significance of the habeas statute in protecting
4 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
5 important writ known to the constitutional law of England, affording as it does a *swift* and
6 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
7 400 (1963) (emphasis added).

8 19. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts
9 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
10 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
11 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
12 more concerned with efficient trial management than with the vindication of constitutional
13 rights.” *Id.*

14 VENUE

15 20. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents
16 are employees or officers of the United States, acting in their official capacity; because a
17 substantial part of the events or omissions giving rise to the claim occurred in the Central District
18 of California; because Ms. Sun is under the jurisdiction of the San Bernardino ICE Field Office,
19 a sub-office of the Los Angeles Field Office, which is in the jurisdiction of the Central District
20 of California; and because there is no real property involved in this action.

21 21. Furthermore, because Ms. Sun is not challenging any present physical confinement but
22 instead the likelihood of her future unlawful re-arrest and re-incarceration on August 27, 2025,
23 during her ICE check-in appointment, as well as her potential removal to a third country, the San
24 Bernardino ICE Field Office is the proper Respondent.

25 EXHAUSTION OF ADMINISTRATIVE REMEDIES

26 22. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
27 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
28 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies

1 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
2 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
3 quotation marks omitted)). Ms. Sun asserts that exhaustion should be waived because
4 administrative remedies are (1) futile and (2) her re-incarceration and removal to a third country
5 would result in irreparable harm.

6 23. No statutory exhaustion requirements apply to Ms. Sun’s claim of unlawful custody and
7 unlawful removal to a third country in violation of her due process rights, and there are no
8 administrative remedies that she needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v.*
9 *Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because
10 the agency does not have jurisdiction to review” constitutional claims); *In re Indefinite Det.*
11 *Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

12 PARTIES

13 24. Ms. Sun was born in China and became a lawful permanent resident of the United States
14 in 1994 at the age of nine. She has lived here ever since. Sinodis Decl. at Ex. A (Copy of Lawful
15 Permanent Resident Card). In 2011, after enduring severe domestic abuse for years and being
16 separated from her infant son, Ms. Sun was arrested for controlled substances trafficking,
17 ultimately resulting in her being placed into removal proceedings where she lost her green card.
18 ICE incarcerated Ms. Sun for six months while it attempted to remove her to China, but an IJ
19 ultimately granted her protection under the CAT—a decision affirmed by the BIA—because she
20 would be tortured if returned to China. In June 2017, ICE released her from custody on an OSUP
21 because it could not effectuate her removal and it determined that she was not a danger to the
22 community. Since that time, Ms. Sun has complied with all conditions of release, including
23 attending ICE check-ins. Ms. Sun’s next check-in with ICE is scheduled for August 27, 2025.

24 25. Respondent Ernesto SANTACRUZ Jr. is the Acting Field Office Director of ICE in Los
25 Angeles, California and is named in his official capacity. The San Bernardino ICE sub-office
26 falls under the jurisdiction of the Los Angeles ICE Office,³ which is the component of DHS that
27
28

³ See U.S. Immigration and Customs Enforcement, “San Bernardino,” available at <https://www.ice.gov/node/62076>.

1 is responsible for detaining and removing noncitizens according to immigration law and oversees
2 custody determinations. In his official capacity, he is the legal custodian of Ms. Sun.

3 26. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
4 capacity. Among other things, ICE is responsible for the administration and enforcement of the
5 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
6 he is the legal custodian of Ms. Sun.

7 27. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
8 DHS is the federal agency encompassing ICE, which is responsible for the administration and
9 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her
10 capacity as Secretary, Respondent Noem has responsibility for the administration and
11 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland
12 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
13 1103(a). Respondent Noem is the ultimate legal custodian of Ms. Sun.

14 28. Respondent Pamela BONDI is the Attorney General of the United States, the most senior
15 official in the U.S. Department of Justice (DOJ), and is named in her official capacity. She has
16 the authority to interpret the immigration laws and adjudicate removal cases. The Attorney
17 General delegates this responsibility to the Executive Office for Immigration Review (EOIR),
18 which administers the immigration courts and the BIA.

19 **STATEMENT OF FACTS**

20 29. Ms. Sun is citizen and national of China who entered the United States as a lawful
21 permanent resident at the age of nine. She currently lives in the Riverside area and works as an
22 IT Business Analyst at CJ Logistics—a company that services Coca Cola—while running a small
23 business with her long-term U.S. citizen partner. She is a devout Christian who is deeply
24 involved in her religious community and volunteers to help the unhoused in her area. Sinodis
25 Decl. at Ex. H (Declaration of Ms. Sun); *id.* at Ex. I (Letters of Support).

26 30. Ms. Sun's childhood in the United States was marred by extreme domestic violence and
27 abuse. Sinodis Decl. at Ex. H (Declaration of Ms. Sun). Her father and stepmother frequently
28 beat and humiliated her and deprived her of food. *Id.* On one occasion, her father was arrested

1 after a teacher noticed bruising and called the police. *Id.*

2 31. Ms. Sun left home as a teenager to escape this abuse but ended up in a relationship with
3 a much older violent man. *Id.* While in that relationship, Ms. Sun gave birth to her U.S. citizen
4 son when she was only seventeen years old. *Id.* Her abusive ex-partner became increasingly
5 violent after their son was born, including hitting her in the eye and slamming her against the
6 bathtub. When Ms. Sun tried to end the relationship in May 2005, he fired his gun at her, shooting
7 the cousin of her friend who was trying to help her. Ms. Sun cooperated in the ensuing law
8 enforcement investigation and testified against her ex-partner in court, leading to his conviction
9 and sentence of more than twenty-five years in prison.

10 32. Lacking any financial and emotional support, Ms. Sun was separated from her young
11 son. In 2011, desperate to make money so that she could regain custody of him, she experienced
12 a serious lapse in judgment and sustained a controlled substance related conviction for
13 importation of methamphetamine in violation of 21 U.S.C. §§ 952 and 960. She pleaded guilty
14 and was sentenced to seventy-eight months in prison.

15 33. On January 23, 2017, upon completion of her criminal sentence, ICE took custody of Ms.
16 Sun for the purpose of pursuing her removal to China. *See* Sinodis Decl. Ex. B (NTA). Due to
17 her conviction, she lost her lawful permanent resident status. However, on February 13, 2017,
18 an IJ granted her Ms. Sun granted her CAT protection, preventing her removal to China because
19 she would be tortured there due to her Christian faith, family history of persecution, and her
20 criminal history. *Id.* at Ex. C (Order Granting CAT). DHS appealed this decision to the BIA,
21 which affirmed the IJ's decision. *Id.* at Ex. D (BIA Decision)

22 34. Several months later, on June 13, 2017, ICE released Ms. Sun from custody, issuing her
23 a Form I-220B, OSUP. Sinodis Decl. at Ex. E (Notice of Decision to Release); *see also id.* at Ex.
24 F (OSUP). ICE was legally prevented from removing her to China, where she would be tortured,
25 and did not secure a travel document to remove her to a third country. The OSUP sets forth
26 numerous restrictions on Ms. Sun's liberty, including that she appear for any and all in-person
27 appointments when instructed by ICE, not travel outside the state of California for more than
28 forty-eight hours without receiving approval from ICE, update her address and employment

1 status within forty-eight hours of any change, and that she assist ICE with obtaining any
2 necessary travel documents. *Id.*

3 35. For more than eight years, Ms. Sun has remained in full compliance with her OSUP and
4 ICE has not sought her re-incarceration. Ms. Sun has secured full-time employment, rebuilt her
5 life, and become a productive and well-respected member of the community. Sinodis Decl. at
6 Exs. H-I. She is not at all the type of person for whom re-incarceration is required.

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

10 37. On information and belief, on January 25, 2025, officials in the new Trump
11 administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically,
12 each field office was instructed to make seventy-five arrests per day.⁴

13 38. Multiple credible reports demonstrate that, in recent weeks and months, numerous
14 noncitizens in the San Bernardino Area, Los Angeles, and across the country who have appeared
15 as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.⁵

16 39. In recent months, ICE has engaged in highly publicized arrests of individuals who
17 presented no flight risk or danger, often with no prior notice that anything regarding their status
18 was amiss or problematic, whisking them away to faraway detention centers without warning.⁶

19
20 ⁴ 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/>.

21 ⁵ See *supra* n.2; “ICE arrests at Sacramento immigration courts raises fear among immigrant community,” KCRA
22 (June 3, 2025), [https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-](https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405)
23 [groups/64951405](https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405); “ICE confirms arrests made in South San Jose,” NBC Bay Area (June 4, 2025),
24 <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> (“The Rapid Response Network, an
immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision
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),
25 <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; “Cincinnati high
school graduate faces deportation after routine ICE check-in,” *ABC News* (June 9, 2025),
26 <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

27 ⁶ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, *N.Y. Times* (Mar. 15,
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-](https://www.cnn.com/2025/03/27/us/rumeyssa-ozturk-detained-what-we-know/index.html)
[ozturk-detained-what-we-know/index.html](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

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

41. On August 20, 2025, undersigned Counsel contacted the U.S. Attorney’s 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.*

42. 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

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).

1 not being reasonably foreseeable. She faces the very real possibility of being re-incarcerated and
2 transferred out of the District, far away from her family and community.

3 43. Ms. Sun is also at risk of being unlawfully removed to a third country without
4 constitutionally adequate notice and a meaningful opportunity to apply for protection under the
5 CAT, in violation of the INA, a binding international treaty, and due process. Currently, DHS
6 has a policy of removing or seeking to remove individuals to third countries *without* first
7 providing adequate notice of third country removal, or any meaningful opportunity to contest
8 that removal if the individual has a fear of persecution or torture in that country. *See* Sinodis
9 Decl. at Ex. J (DHS Policy Regarding Third Country Removal).

10 44. Intervention from this Court is therefore required to ensure that Ms. Sun is not (1)
11 unlawfully re-arrested and re-incarcerated, (2) held in unjustified, prolonged, and indefinite
12 custody, (3) removed to a third country, and (4) subjected to irreparable harm as a result.

13 **LEGAL BACKGROUND**

14 **I. Under the circumstances of this case, the constitution does not permit Ms. Sun to** 15 **be re-arrested and re-incarcerated absent notice and a constitutionally compliant** 16 **bond hearing before a neutral arbiter where the government bears the burden.**

17 **a. Right to a Hearing Prior to Re-incarceration**

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

22 46. If ICE fails to remove an individual during the ninety-day removal period, the law
23 requires ICE to release the individual under conditions of supervision, including periodic
24 reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the
25 alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist.
26 Specifically, ICE “may” detain an individual beyond ninety days if the individual was ordered
27 removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. §
28 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under
such circumstances is not boundless. Rather, it is constrained by the constitutional requirement

1 that detention “bear a reasonable relationship to the purpose for which the individual [was]
2 committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order
3 detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if
4 removal cannot be effectuated. *Id.* at 697.

5 47. Post-final order detention is only authorized for a “period reasonably necessary to secure
6 removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701.
7 After this six-month period, if a detainee provides “good reason” to believe that their removal is
8 not significantly likely in the reasonably foreseeable future, “the Government must respond with
9 evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the
10 individual must be released.

11 48. That said, detainees are entitled to release even before six months of detention, as long
12 as removal is not reasonably foreseeable. See 8 C.F.R. § 241.13(b)(1) (authorizing release after
13 ninety days where removal not reasonably foreseeable). Moreover, as the period of post-final-
14 order detention grows, what counts as “reasonably foreseeable” must conversely shrink.
15 *Zadvydas* at 701.

16 49. Even where detention meets the *Zadvydas* standard for reasonable foreseeability,
17 detention violates the Due Process Clause unless it is “reasonably related” to the government’s
18 purpose, which is to prevent danger or flight risk. See *Zadvydas*, 533 U.S. at 700 (“[I]f removal
19 is reasonably foreseeable, the habeas court should consider the risk of the alien’s committing
20 further crimes as a factor potentially justifying confinement within that reasonable removal
21 period”) (emphasis added); *Id.* at 699 (purpose of detention is “assuring the alien’s presence at
22 the moment of removal”); *Id.* at 690-91 (discussing twin justifications of detention as preventing
23 flight and protecting the community). Thus, Ms. Sun must not be taken into custody because she
24 does not pose a danger or flight risk that warrants post-final-order custody, regardless of whether
25 her removal can be effectuated within a reasonable period of time. This is especially so because
26 ICE has *already* released Ms. Sun from detention because she is neither a flight risk nor a danger
27 to the community—a finding that has been reaffirmed each time she appears for her check-ins
28 and is not taken into custody. See *Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL

1 1918679, at *2 (“DHS, at least implicitly, made a finding that petitioner was not a flight risk
2 when it released him”) (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3
3 & n.6 (S.D.N.Y. June 18, 2025)).

4 50. The government’s own regulations contemplate this requirement. They dictate that even
5 after ICE determines that removal is reasonably foreseeable—and that custody therefore does
6 not per se exceed statutory authority—the government must still determine whether continued
7 detention is warranted based on flight risk or danger. See 8 C.F.R. § 241.13(g)(2) (providing that
8 where removal is reasonably foreseeable, “detention will continue to be governed under the
9 established standards” in 8 C.F.R. § 241.4).

10 51. The regulations at 8 C.F.R. § 241.4 set forth the custody review process that existed even
11 before *Zadvydas*. This mandated process, known as the post-order custody review, requires ICE
12 to conduct “90-day custody reviews” prior to expiration of the ninety-day removal period and to
13 consider release of individuals who pose no danger or flight risk. 8 C.F.R. § 241.4(e)-(f). Among
14 the factors to be considered in these custody reviews are “ties to the United States such as the
15 number of close relatives residing here lawfully”; whether the noncitizen “is a significant flight
16 risk”; and “any other information that is probative of whether” the noncitizen is likely to “adjust
17 to life in a community,” “engage in future acts of violence,” “engage in future criminal activity,”
18 pose a danger to themselves or others, or “violate the conditions of her or her release from
19 immigration custody pending removal from the United States.” *Id.*

20 52. Individuals with final orders who are released after a post-order custody review are
21 subject to Forms I-220B, Order of Supervision. 8 C.F.R. § 241.4(j). After an individual has been
22 released on an OSUP, as Ms. Sun was, ICE cannot revoke such an order without cause or
23 adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

24 **b. Ms. Sun’s Protected Liberty Interest in her Release**

25 53. Ms. Sun’s liberty from immigration custody is protected by the Due Process Clause:
26 “Freedom from imprisonment—from government custody, detention, or other forms of physical
27 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533
28 U.S. at 690 (2001).

1 54. Since June 2017, Ms. Sun exercised that freedom pursuant to her prior release from
2 custody by ICE and placement on an OSUP. Sinodis Decl. at Ex. E (OSUP). She thus retains a
3 weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-
4 incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S.
5 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d
6 ----, 2025 WL 2084921, at *3 (“even when ICE has the initial discretion to detain or release a
7 noncitizen pending removal proceedings, after that individual is released from custody she has a
8 protected liberty interest in remaining out of custody”).

9 55. Moreover, the Supreme Court has recognized that post-removal order detention is
10 potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at
11 701. In this case, Ms. Sun cannot be removed to China as an IJ and the BIA have found that she
12 would be tortured there. In the absence of a travel document from a third country that actually
13 permits Ms. Sun’s removal, her removal is not foreseeable at all, let alone reasonably. Therefore,
14 her re-incarceration would be unconstitutional.

15 56. Just as importantly, Ms. Sun continued presenting herself before ICE for her regular
16 check-in appointments for the past eight years, where ICE did not seek to re-arrest her during
17 this time. ICE instead gave her a future date and time to appear again.

18 57. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
19 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions
20 of her parole, [a parolee] can be gainfully employed and is free to be with family and friends and
21 to form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that
22 “the parolee has relied on at least an implicit promise that parole will be revoked only if she fails
23 to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee,
24 although indeterminate, includes many of the core values of unqualified liberty and its
25 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever
26 name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.”
27 *Morrissey*, 408 U.S. at 482.

1 58. This basic principle—that individuals have a liberty interest in their conditional release—
2 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
3 *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created
4 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation
5 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation
6 have a protected liberty interest requiring pre-deprivation process). As the First Circuit has
7 explained, when analyzing the issue of whether a specific conditional release rises to the level
8 of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
9 conditional release in the case before them with the liberty interest in parole as characterized by
10 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
11 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683
12 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
13 lawfully revocable—has a liberty interest that entitles her to constitutional due process before
14 she is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
15 408 U.S. at 482).

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

24 60. Here, when this Court “‘compar[es] the specific conditional release in [Ms. Sun’s case],
25 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
26 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Ms. Sun’s release
27 “enables [her] to do a wide range of things open to persons” who have never been in custody or
28

1 convicted of any crime, including to live at home, work, and “be with family and friends and to
2 form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

3 61. Ms. Sun has complied with all conditions of release for over eight years. She has
4 graduated with a college degree, obtained full-time employment, built a stable relationship with
5 her long-term U.S. citizen partner, become involved in her faith-based community, and become
6 a critical source of support for her aging Lawful Permanent Resident father. Sinodis Decl. at Ex.
7 I (Letters of Support).

8 **c. Ms. Sun’s Liberty Interest Mandates a Hearing Before any Re-Arrest**

9 62. Ms. Sun asserts that, here, (1) where her detention would be civil, (2) where she has been
10 at liberty for eight years, during which time she has complied with all conditions of release, (3)
11 where she has been granted CAT protection, (4) where no change in circumstances exist that
12 would justify her incarceration, and (5) where the only circumstance that has changed is ICE’s
13 move to arrest as many people as possible because of the new administration, due process
14 mandates that she receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

15 63. “Adequate, or due, process depends upon the nature of the interest affected. The more
16 important the interest and the greater the effect of its impairment, the greater the procedural
17 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769
18 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court
19 must “balance [Ms. Sun’s] liberty interest against the [government’s] interest in the efficient
20 administration of” its immigration laws in order to determine what process she is owed to ensure
21 that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set
22 forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing
23 test: “first, the private interest that will be affected by the official action; second, the risk of an
24 erroneous deprivation of such interest through the procedures used, and the probative value, if
25 any, of additional or substitute procedural safeguards; and finally the government’s interest,
26 including the function involved and the fiscal and administrative burdens that the additional or
27 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews*
28 *v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

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

d. Ms. Sun’s Private Interest in her Liberty is Profound

66. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that 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—apply with even greater force to individuals like Ms. Sun, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*,

1 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have
2 held that the parolee cannot be re-arrested without a due process hearing in which they can raise
3 any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-*
4 *Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Ms. Sun retains a truly weighty liberty
5 interest even though she is under conditional release.

6 67. What is at stake for Ms. Sun is one of the most profound individual interests recognized
7 by our legal system: whether ICE may unilaterally nullify a prior release decision and take away
8 her physical freedom, i.e., her “constitutionally protected interest in avoiding physical restraint.”
9 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom
10 from bodily restraint has always been at the core of the liberty protected by the Due Process
11 Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690
12 (“Freedom from imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v.*
14 *Oklahoma*, 517 U.S. 348 (1996).

15 68. Thus, there is a profound private interest at stake in this case, which must be weighed
16 heavily when determining what process Ms. Sun is owed under the Constitution. *See Mathews*,
17 424 U.S. at 334-35.

18 **e. Respondents’ Interest in Re-Incarcerating Ms. Sun Without a Hearing is**
19 **Low and the Burden on Respondents to Refrain from Re-Arresting Her**
20 **Unless and Until she is Provided a Hearing That Comports with Due Process**
is Minimal

21 69. Respondents’ interest in detaining Ms. Sun without a due process hearing is low, and
22 when weighed against her significant private interest in her liberty, the scale tips sharply in favor
23 of enjoining Respondents from re-arresting her unless and until ICE demonstrates by clear and
24 convincing evidence that she is a flight risk or danger to the community. It becomes abundantly
25 clear that the *Mathews* test favors Ms. Sun when the Court considers that the process she seeks—
26 notice and a hearing regarding whether her OSUP should be revoked given that she is neither a
27 flight risk nor a danger and her removal is not reasonably foreseeable—is a standard course of
28 action for the government. Providing Ms. Sun with a hearing before this Court (or a neutral

1 decisionmaker) to determine whether there is clear and convincing evidence that she is a flight
2 risk or danger to the community would impose only a *de minimis* burden on the government,
3 because the government routinely provides this sort of review to individuals in Ms. Sun's same
4 circumstances, as required by its own regulations. 8 C.F.R. § 241.4(e)-(f).

5 70. Because immigration detention is civil, it can have no punitive purpose. The
6 government's only interests in holding an individual in immigration detention can be to prevent
7 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*
8 *Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention
9 of noncitizens who cannot be removed to the country in their removal order is unconstitutional.
10 In this case, ICE cannot plausibly assert that it has a sudden interest in detaining Ms. Sun due to
11 alleged dangerousness, or due to a change in the foreseeability of her removal, as her
12 circumstances have not changed since her release from ICE custody in June 2017.

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

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

1 the government's interest in detaining her.⁷ *See Singh*, No. 1:25-CV-00801-KES-SKO (HC),
2 2025 WL 1918679, at *2 ("The law requires a change in relevant facts, not just a change in [the
3 government's] attitude") (internal quotations omitted). Moreover, nothing has changed regarding
4 the lack of foreseeability of her removal.

5 73. Continued freedom from confinement until ICE assesses and demonstrates that Ms. Sun
6 is a flight risk or danger to the community, and that her detention is not going to be indefinite, is
7 far *less* costly and burdensome for the government than keeping her detained. As the Ninth
8 Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration
9 detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5
10 million." *Hernandez*, 872 F.3d at 996.

11 74. Providing Ms. Sun with a hearing before this Court (or a neutral decisionmaker)
12 regarding any re-arrest is a routine procedure that the government provides to those in
13 immigration jails on a daily basis. At that hearing, the Court would have the opportunity to
14 determine whether circumstances have changed sufficiently to require some amount of bond—
15 or if her release should be revoked. But there is no justifiable reason to re-incarcerate Ms. Sun
16 prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the
17 State has an "overwhelming interest in being able to return [a parolee] to imprisonment without
18 the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of
19 her parole . . . the State has no interest in revoking parole without some informal procedural
20 guarantees." 408 U.S. at 483. Moreover, the "fiscal and administrative burdens" that a pre-
21 deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
22 334-35. Ms. Sun does not seek a unique or expensive form of process, but rather a routine hearing
23 regarding whether her release should be revoked and whether she should be re-incarcerated.

24 **f. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an**
25 **Erroneous Deprivation of Liberty is High, and Process in the Form of a**
26 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would**
27 **Decrease That Risk**

28 75. Providing Ms. Sun a pre-deprivation hearing would decrease the risk of her being

⁷ *See supra* n. 6.

1 erroneously deprived of her liberty. Before she can be lawfully detained, she must be provided
2 with a hearing before a neutral adjudicator at which the government is held to show that there
3 has been sufficiently changed circumstances such that she should be detained because clear and
4 convincing evidence exists to establish that she is a danger to the community or a flight risk.

5 76. Under the process that ICE maintains is lawful—which affords Ms. Sun no process
6 whatsoever—ICE can simply re-detain her at any point if the agency desires to do so. The risk
7 that Ms. Sun will be erroneously deprived of her liberty is high if ICE is permitted to re-
8 incarcerate her after making a unilateral decision to re-arrest her. Pursuant to 8 C.F.R. §
9 241.4(l)(2), revocation of release on an OSUP is at the discretion of the Executive Associate
10 Commissioner. Thus, the regulations permit ICE to unilaterally re-detain individuals, even for
11 an oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination
12 and can decide whether the agency wants to hold Ms. Sun. 8 C.F.R. § 241.4(e)-(f).

13 77. By contrast, the procedure Ms. Sun seeks—a hearing in front of a neutral adjudicator at
14 which the government must prove by clear and convincing evidence that circumstances have
15 changed to justify her detention *before* any re-arrest is effected because it possesses a travel
16 document that would enable the agency to remove Ms. Sun—is much more likely to produce
17 accurate determinations regarding factual disputes, such as whether a certain occurrence
18 constitutes a “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th
19 Cir. 1989) (when “delicate judgments depending on credibility of witnesses and assessment of
20 conditions not subject to measurement” are at issue, the “risk of error is considerable when just
21 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
22 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
23 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
24 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
25 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
26 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

27 78. Due process also requires consideration of alternatives to detention at any hearing that
28 may occur. The primary purpose of immigration detention is to ensure a noncitizen’s appearance

1 during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to
2 this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v.*
3 *Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in
4 determining whether Petitioner's re-incarceration is warranted.

5 **II. Ms. Sun has the right to constitutionally adequate procedures prior to third**
6 **country removal.**

7 79. Prior to any third country removal, ICE must provide Ms. Sun with sufficient notice and
8 an opportunity to respond and apply for fear-based relief as to that country, in compliance with
9 the INA, due process, and the CAT, which is a binding international treaty.⁸ Currently, DHS has
10 a policy of removing or seeking to remove individuals to third countries without first providing
11 constitutionally adequate notice of third country removal, or any meaningful opportunity to
12 contest that removal if the individual has a fear of persecution or torture in that country. Sinodis
13 Decl. at Ex. J (DHS Policy Regarding Third Country Removal). This policy clearly violates due
14 process and the United States' obligations under the CAT.

15 **a. Removal proceedings pursuant to 8 U.S.C. § 1229a (INA § 240)**

16 80. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility
17 Act (IIRIRA). The Act generally retained prior procedures for removal hearings for all
18 noncitizens—i.e., full immigration court hearings, appellate review before the BIA, and federal
19 court review. *See* 8 U.S.C. § 1229a; 8 U.S.C. § 1252(a). In these removal proceedings
20 (commonly referred to as “Section 240” proceedings), the noncitizen is entitled to select a
21 country of removal. 8 U.S.C. § 1231(b)(2)(A); *see also* 8 C.F.R. § 1240.10(f) (“[T]he
22 immigration judge shall notify the respondent that if he or she is finally ordered removed, the
23 country of removal will in the first instance be the country designated by the respondent . . .”).
24 The IJ will designate the country where the person “is a subject, national, or citizen,” if either
25 the noncitizen does not select a country or as an alternative in the event the noncitizen's
26 designated country does not accept the individual. 8 U.S.C. § 1231(b)(2)(D). The IJ also may
27 designate alternative countries, as specifically set out by 8 U.S.C. § 1231(b)(2)(E). For
28

⁸ *See supra* n.2.

1 individuals placed in Section 240 proceedings upon arrival, the statute provides designation to
2 the country from which the individual boarded a vessel or aircraft and then can consider
3 alternative countries. *See* 8 U.S.C. § 1231(b)(1); *see also* 8 C.F.R. § 1240.10(f).

4 81. An IJ must provide sufficient notice and opportunity to apply for protection from a
5 designated country of removal. 8 C.F.R. § 1240.10(f) (providing that the “immigration judge
6 shall notify the respondent” of designated countries of removal) (emphasis added); 8 C.F.R. §
7 1240.11(c)(1)(i) (providing that the IJ shall “[a]dvise the [noncitizen] that he or she may apply
8 for asylum in the United States or withholding of removal to [the designated countries of
9 removal]”).

10 82. For individuals determined to be ineligible for asylum, Congress further provided, with
11 certain exceptions not relevant here, that “notwithstanding [8 U.S.C. §§ 1231(b)(1) and (2)], the
12 Attorney General [i.e., DHS] may not remove [a noncitizen] to a country if the Attorney General
13 [(i.e., an immigration judge)] decides that [the noncitizen’s] life or freedom would be threatened
14 in that country because of [the noncitizen’s] race, religion, nationality, membership in a
15 particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§
16 208.16, 1208.16. This form of protection, known as “withholding of removal,” is mandatory,
17 i.e., it cannot be denied to eligible individuals in the exercise of discretion. Unlike asylum, the
18 protection of withholding of removal is country-specific.

19 83. Individuals in Section 240 proceedings who are ineligible for withholding of removal,
20 are still entitled to receive protection under the CAT, in the form of withholding or deferral of
21 removal, upon demonstrating a likelihood of torture if removed to the designated country of
22 removal. *See* FARRA (codified as Note to 8 U.S.C. § 1231); 8 C.F.R. §§ 208.16(c), 208.17(a),
23 1208.16(c), 1208.17(a); 28 C.F.R. § 200.1. Like withholding of removal under 8 U.S.C. §
24 1231(b)(3), CAT protection is mandatory. *Id.* With respect to any individual granted deferral of
25 removal under CAT, the IJ “shall also inform the [noncitizen] that removal has been deferred
26 only to the country in which it has been determined that the [noncitizen] is likely to be tortured,
27 and that the [noncitizen] may be removed at any time to another country where he or she is not
28 likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

84. An IJ may only terminate a grant of CAT protection based on evidence that the person will no longer face torture. DHS must move for a new hearing and provide evidence “relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been deferred and that was not presented at the previous hearing.” 8 C.F.R. §§ 208.17(d)(1), 1208.17(d)(1). If a new hearing is granted, the IJ must provide notice “of the time, place, and date of the termination hearing,” and must inform the noncitizen of the right to “supplement the information in his or her initial [withholding or CAT] application” “within 10 calendar days of service of such notice (or 13 calendar days if service of such notice was by mail).” 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2).

85. Individuals in Section 240 proceedings are entitled to an administrative appeal to the BIA along with an automatic stay of deportation while the appeal is pending, and to seek judicial review of an adverse administrative decision by filing a petition for review in the court of appeals. *See* 8 U.S.C. §§ 1101(a)(47)(B), 1252(a); 8 C.F.R. §§ 1003.6(a), 1240.15.

b. Statutory scheme for removal to a third country

86. Congress established the statutory process for designating countries to which noncitizens may be removed, 8 U.S.C. § 1231(b)(1)-(3).⁹

87. Subsection (b)(1) applies to noncitizens “[a]rriving at the United States,” including from a contiguous territory, but expressly contemplates arrival via a “vessel or aircraft.” It designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(1)(B) (removal to contiguous country from which the noncitizen traveled), § 1231(b)(1)(C) (alternative countries).

88. Subsection (b)(2) applies to all other noncitizens, and like Subsection (b)(1), designates countries and alternative countries to which the noncitizen may be removed. 8 U.S.C. § 1231(b)(2)(A) (noncitizen’s designation of a country of removal), 1231(b)(2)(B) (limitation on designation), 1231(b)(2)(C) (disregarding designation), 1231(b)(2)(D) (alternative country), 1231(b)(2)(D) (alternative countries), 1231(b)(2)(E) (additional removal countries).

⁹ References to the Attorney General in Section 1231(b) refer to the Secretary of DHS for functions related to carrying out a removal order and to the Attorney General for functions related to selection of designations and decisions about fear-based claims. 6 U.S.C. § 557. The Attorney General has delegated the latter functions to the immigration courts and BIA. *See* 8 C.F.R. §§ 1208.16, 1208.17, 1208.31, 1240.10(f), 1240.12(d).

89. Critically, both Subsections (b)(1) and (b)(2), have a specific carve-out provision prohibiting removal of persons to countries where they face persecution or torture. Specifically, § 1231(b)(3)(A), entitled “Restriction on removal to a country where [noncitizen’s] life or freedom would be threatened,” reads: Notwithstanding paragraphs [b](1) and [b](2), the Attorney General may not remove [a noncitizen] to a country if the Attorney General decides that the [noncitizen’s] life or freedom would be threatened in that country because of the [noncitizen’s] race, religion, nationality, membership in a particular social group, or political opinion. *Id.* § 1231(b)(3)(A) (emphasis added).

90. Similarly, with respect to the CAT, the implementing regulations allow for removal to a third country, but only “where he or she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

91. In *Jama v. Immigr. & Customs Enf’t*, the Supreme Court addressed the designation procedure under Subsection (b)(2). 543 U.S. 335 (2005). Critically, the Court stated that noncitizens who “face persecution or other mistreatment in the country designated under § 1231(b)(2), . . . have a number of available remedies: asylum; withholding of removal; relief under an international agreement prohibiting torture” *Jama*, 543 U.S. at 348 (citing 8 U.S.C. §§ 1158(b)(1), 1231(b)(3)(A); 8 C.F.R. §§ 208.16(c)(4), 208.17(a).

92. Although individuals granted CAT protection may be removed to a third country, the regulations provide that they may not be removed to a country where they are likely to be tortured: “The immigration judge shall also inform the [noncitizen] that removal has been deferred only to the country in which it has been determined that the [noncitizen] is likely to be tortured, and that the [noncitizen] may be removed at any time to another country where he or she is not likely to be tortured.” 8 C.F.R. §§ 208.17(b)(2), 1208.17(b)(2).

93. Notably, the regulations also provide that protection under CAT may be terminated based on evidence that the person will no longer face torture but nevertheless provides certain protections to noncitizens. First, the regulations require DHS to move for a new hearing, requiring that DHS support their motion for the new hearing with evidence “relevant to the possibility that the [noncitizen] would be tortured in the country to which removal has been

1 deferred and that was not presented at the previous hearing. 8 C.F.R. §§ 208.17(d)(1),
2 1208.17(d)(1). Second, even if a new hearing is granted, the regulations require that the IJ
3 provide the noncitizen with notice “of the time, place, and date of the termination hearing. Such
4 notice shall inform the [noncitizen] that the [noncitizen] may supplement the information in his
5 or her initial application for withholding of removal under the Convention Against Torture and
6 shall provide that the [noncitizen] must submit any such supplemental information within 10
7 calendar days of service of such notice (or 13 calendar days if service of such notice was by
8 mail).” 8 C.F.R. §§ 208.17(d)(2), 1208.17(d)(2). Thus, not only is the noncitizen provided notice,
9 but also an opportunity to submit documentation in support of their claim for protection.

10 **c. DHS’s obligation to provide notice and an opportunity to present a fear-**
11 **based claim before removal to a third country.**

12 94. For individuals in removal proceedings, the designation of a country of removal (or, at
13 times, countries in the alternative that the IJ designates) on the record provides notice and an
14 opportunity to permit a noncitizen who fears persecution or torture in the designated country (or
15 countries) to file an application for protection. See 8 C.F.R. § 1240.10(f) (stating that
16 “immigration judge shall notify the [noncitizen]” of proposed countries of removal); 8 C.F.R. §
17 1240.11(c)(1)(i) (“If the [noncitizen] expresses fear of persecution or harm upon return to any of
18 the countries to which the [noncitizen] might be removed pursuant to § 1240.10(f) . . . the
19 immigration judge shall . . . [a]dvise [the noncitizen] that he or she may apply for asylum in the
20 United States or withholding of removal to those countries[.]”).

21 95. Pursuant to 8 U.S.C. § 1231(b)(3)(A), courts repeatedly have held that individuals cannot
22 be removed to a country that was not properly designated by an IJ if they have a fear of
23 persecution or torture in that country. See *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir.
24 1999); *Kossov v. INS*, 132 F.3d 405, 408-09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932,
25 938 (9th Cir. 2004); cf. *Protsenko v. U.S. Att’y Gen.*, 149 F. App’x 947, 953 (11th Cir. 2005)
26 (per curiam) (permitting designation of third country where individuals received “ample notice
27 and an opportunity to be heard”).

28 96. Providing such notice and opportunity to present a fear-based claim prior to deportation

1 also implements the United States' obligations under international law. *See* United Nations
2 Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations
3 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267;
4 Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8
5 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of
6 1980 “amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming
7 it to the language of Article 33 of the United Nations Protocol”); *see also* United Nations
8 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
9 opened for signature Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S.
10 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) (“It shall be the policy of
11 the United States not to expel, extradite, or otherwise effect the involuntary return of any person
12 to a country in which there are substantial grounds for believing the person would be in danger
13 of being subjected to torture, regardless of whether the person is physically present in the United
14 States.”); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017,
15 Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4
16 (“Furthermore, the person at risk [of torture] should never be deported to another State where
17 he/she may subsequently face deportation to a third State in which there are substantial grounds
18 for believing that he/she would be in danger of being subjected to torture.”).

19 97. As the Supreme Court has explained, such language “generally indicates a command that
20 admits of no discretion on the part of the person instructed to carry out the directive,” *Nat’l Ass’n*
21 *of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass’n of Civilian*
22 *Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also*
23 *Black’s Law Dictionary* (11th ed. 2019) (“Shall” means “[h]as a duty to; more broadly, is
24 required to This is the mandatory sense that drafters typically intend and that courts typically
25 uphold.”); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that “shall” language
26 in a statute was unambiguously mandatory). Accordingly, any imminent third country removal
27 fails to comport with the statutory obligations set forth by Congress in the INA, the CAT, and
28 due process. Several district courts have already found as much. *See Hoac*, No. 2:25-CV-01740-

1 DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
2 *7; *J.R.*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *4.

3 98. Meaningful notice and opportunity to present a fear-based claim prior to deportation to a
4 country where a person fears persecution or torture are also fundamental due process protections
5 under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953;
6 *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019).
7 Similarly, a “last minute” IJ designation of a country during removal proceedings that affords no
8 meaningful opportunity to apply for protection “violate[s] a basic tenet of constitutional due
9 process.” *Andriasian*, 180 F.3d at 1041.

10 99. The federal government has repeatedly acknowledged these obligations. In June 2001,
11 the former Immigration and Naturalization Service drafted a document entitled “Notice to Alien
12 of Removal to Other than Designated Country (Form I-913),” which would have provided
13 noncitizens with written notice of deportation to a third country and a 15-day automatic stay of
14 removal to allow the noncitizen to file an unopposed motion to reopen removal proceedings and
15 accompanying Form I-589 (protection application) before an IJ. *See D.V.D. v. U.S. Department*
16 *of Homeland Security*, 1:25-cv-10676, Dkt. 1-2 (D. Mass. Mar. 23, 2025) Records Produced in
17 Response to Freedom of Information Act (FOIA) Litigation, *Nat. 'l Immigr. Litigation Alliance*
18 *v. ICE*, No. 1:22-cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI00055* 9-14. Almost
19 twenty years later, in June 2020, DHS again drafted a model “Notice of Removal to Other than
20 Designated Country,” that likewise provided these protections. *See id.* at Dkt. 1-3, Records
21 Produced in Response to FOIA Litigation, *Nat. 'l Immigr. Litigation Alliance v. ICE*, No. 1:22-
22 cv-11331-IT (D. Mass. filed Aug. 17, 2022), at 2022-ICLI-00055* 8 (Notice).¹⁰ Although
23 neither form was ever published, both reflect how notice must be provided to be meaningful.¹¹

24 100. Additionally, in 2005, in jointly promulgating regulations implementing 8 U.S.C.
25 § 1231(b), the Departments of Justice and Homeland Security asserted that “[a noncitizen] will
26 have the opportunity to apply for protection as appropriate from any of the countries that are

27 ¹⁰ The complete production is available at <https://tinyurl.com/2t868ykr>. Pages 1-7 (Bates 2022-ICLI-00055* 1-7)
28 indicate that the notice was drafted on or about May 21, 2020.

¹¹ The forms fell short of providing a meaningful opportunity to present a fear-based claim, however, because they placed the burden on the noncitizen to file a motion to reopen.

1 identified as potential countries of removal under [8 U.S.C. § 1231(b)(1) or (b)(2)].” Execution
2 of Removal Orders; Countries to Which Aliens May Be Removed, 70 Fed. Reg. 661, 671 (Jan.
3 5, 2005) (codified at 8 C.F.R. pts. 241, 1240, 1241) (supplementary information). Furthermore,
4 the Departments contemplated that, in cases where ICE sought removal to a country that was not
5 designated in removal proceedings, namely, “removals pursuant to [8 U.S.C. § 1231(b)(1)(C)(iv)
6 or (b)(2)(E)(vii)],” DHS would join motions to reopen “[i]n appropriate circumstances” to allow
7 the noncitizen to apply for protection. *Id.*

8 101. Furthermore, consistent with the above-cited authorities, at oral argument in
9 *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), the Assistant to the Solicitor General
10 represented that the government must provide a noncitizen with notice and an opportunity to
11 present a fear-based claim before that noncitizen can be deported to a non-designated third
12 country. Specifically, at oral argument in that case, the following exchange between Justice
13 Kagan and Vivek Suri, Assistant to the Solicitor General, took place:

14 JUSTICE KAGAN: . . . [S]uppose you had a third country that, for whatever reason, was
15 willing to accept [a noncitizen]. If -- if -- if that [noncitizen] was currently in withholding
16 proceed -- proceedings, you couldn't put him on a plane to that third country, could you?

17 MR. SURI: We could after we provide the [noncitizen] notice that we were going to do
18 that.

19 JUSTICE KAGAN: Right.

20 MR. SURI: But, without notice --

21 JUSTICE KAGAN: So that's what it would depend on, right? That -- that you would have
22 to provide him notice, and if he had a fear of persecution or torture in that country, he
23 would be given an opportunity to contest his removal to that country. Isn't that right?

24 MR. SURI: Yes, that's right.

25 JUSTICE KAGAN: So, in this situation, as to these [noncitizens] who are currently in
26 withholding proceedings, you can't put them on a plane to anywhere right now, isn't that
27 right?

28 MR. SURI: Certainly, I agree with that, yes.

1 JUSTICE KAGAN: Okay. And that's not as a practical matter. That really is, as -- as you
2 put it, in the eyes of the law. In the eyes of the law, you cannot put one of these
3 [noncitizens] on a plane to any place, either the -- either the country that's referenced in
4 the removal order or any other country, isn't that right?

5 MR. SURI: Yes, that's right.

6 See Transcript of Oral Argument at 20-21, *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

7 102. Notice is only meaningful if it is presented sufficiently in advance of the
8 deportation to stop the deportation, is in a language the person understands, and provides for an
9 automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen
10 removal proceedings so that a third country for removal may be designated as required under the
11 regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041;
12 *Aden*, 409 F. Supp. 3d at 1009 (“A noncitizen must be given sufficient notice of a country of
13 deportation [such] that, given his capacities and circumstances, he would have a reasonable
14 opportunity to raise and pursue his claim for withholding of deportation.”).

15 103. An opportunity to present a fear-based claim is only meaningful if the noncitizen
16 is not deported before removal proceedings are reopened. See *Aden*, 409 F. Supp. 3d at 1010
17 (holding that merely giving petitioner an opportunity to file a discretionary motion to reopen “is
18 not an adequate substitute for the process that is due in these circumstances” and ordering
19 reopening); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (remanding to BIA to
20 determinate whether designation is appropriate).

21 d. **Other district courts have recently found DHS must provide notice and an**
22 **opportunity to present fear-based claims before third country removal can**
23 **occur.**

24 104. In circumstances nearly identical to Ms. Sun's, the Honorable Judge Tigar in the
25 Northern District of California determined that a noncitizen whose removal to El Salvador had
26 been ordered deferred pursuant to CAT was entitled to notice and an opportunity to be heard
27 before removal to any third country. See *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL
28 2243616, at *5 (N.D. Cal. Aug. 6, 2025) (“Accordingly, there are no countries to which Ortega
could currently be removed without his first being afforded notice and opportunity to be heard

1 on a fear-based claim as to that country, as the Fifth Amendment Due Process Clause requires.”).

2 105. As stated above, the U.S. District Court for the District of Massachusetts also
3 previously issued a nationwide preliminary injunction blocking such third country removals
4 without notice and a meaningful opportunity to apply for relief under the CAT, in recognition
5 that the government’s policy violates due process and the United States’ obligations under the
6 CAT. *D.V.D., et al. v. U.S. Department of Homeland Security, et al. v.*, No. 25-10676-BEM (D.
7 Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government’s motion to
8 stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, 606 U.S. -
9 -- (June 27, 2025), limiting nationwide injunctions. However, the Supreme Court’s order, which
10 is not accompanied by an opinion, signals only disagreement with nature, and not the substance,
11 of the nationwide preliminary injunction.

12 106. Thus, it is clear that if Ms. Sun were to be removed to any third country it would
13 violate her due process rights unless she is first provided with constitutionally adequate notice
14 and a meaningful opportunity to apply for protection under the CAT. In the absence of any other
15 injunction, intervention by this Court is necessary to protect those rights.

16 **FIRST CAUSE OF ACTION**

17 **Procedural Due Process – Re-Arrest and Re-Incarceration**

18 **U.S. Const. amend. V**

19 107. Ms. Sun re-alleges and incorporates herein by reference, as is set forth fully
20 herein, the allegations in all the preceding paragraphs.

21 108. The Due Process Clause of the Fifth Amendment forbids the government from
22 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

23 109. Ms. Sun has a vested liberty interest in her conditional release. Due Process does
24 not permit the government to strip her of that liberty without a hearing before this Court. *See*
25 *Morrissey*, 408 U.S. at 487-488.

26 110. The Court must therefore order that, prior to any re-arrest, the government must
27 provide her with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator
28 would evaluate, *inter alia*, whether clear and convincing evidence demonstrates that Ms. Sun is

1 a danger to the community or a flight risk, taking into consideration alternatives to detention,
2 and that her removal is reasonably foreseeable, such that her re-incarceration is warranted.

3 **SECOND CAUSE OF ACTION**

4 **Substantive Due Process – Re-Arrest and Re-Incarceration**

5 **U.S. Const. amend. V**

6 111. Ms. Sun re-alleges and incorporates herein by reference, as is set forth fully
7 herein, the allegations in all the preceding paragraphs.

8 112. The Due Process Clause of the Fifth Amendment forbids the government from
9 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
10 amend. V.

11 113. Ms. Sun has a vested liberty interest in her conditional release. Due Process does
12 not permit the government to strip her of that liberty without it being tethered to one of the two
13 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
14 community from danger.

15 114. Since June 2017, Ms. Sun has complied with the conditions of release imposed
16 on her by ICE, thus demonstrating that she is neither a flight risk nor a danger. Re-arresting her
17 now would be punitive and violate her constitutional right to be free from the unjustified
18 deprivation of her liberty.

19 115. For these reasons, Ms. Sun's re-arrest without first being provided a hearing
20 would violate the Constitution.

21 116. The Court must therefore order that, prior to any re-arrest, the government must
22 provide her with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator
23 would evaluate, *inter alia*, whether clear and convincing evidence demonstrates that Ms. Sun is
24 a danger to the community or a flight risk, taking into consideration alternatives to detention,
25 and that her removal is reasonably foreseeable, such that her re-incarceration is warranted.

26 **THIRD CAUSE OF ACTION**

27 **Violation of 8 U.S.C. § 1231(a) – Re-Arrest and Re-Incarceration**

28 117. Ms. Sun re-alleges and incorporates herein by reference, as if set forth fully

1 herein, the allegations in all the preceding paragraphs.

2 118. The INA requires mandatory detention of individuals with final removal orders
3 only during the ninety-day removal period. 8 U.S.C. § 1231(a)(2).

4 119. A noncitizen who is not removed within that period “shall be subject to
5 supervision under regulations prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3).

6 120. While § 1231(a)(6) permits detention beyond the removal period in certain
7 situations, “once removal is no longer reasonably foreseeable, continued detention is no longer
8 authorized by statute.” *Zadvydas*, 533 U.S. at 699.

9 121. No statute permits Respondents to re-detain an individual who has been released
10 under § 1231(a)(3) without evidence that removal is now reasonably foreseeable or that the
11 individual has violated the conditions of their release.

12 122. Ms. Sun was previously detained by ICE and released after an individualized
13 custody determination that considered any danger or unmitigable flight risk. She has an interest
14 in remaining free from physical confinement where removal is not reasonably foreseeable, she
15 has not violated the conditions of her release, and where re-detention is unlawful because
16 Respondents have not created a lawful mechanism to ensure that she receives meaningful notice
17 and an opportunity to present a fear-based claim before removal to a third country.

18 **FOURTH CAUSE OF ACTION**

19 **Violation of the APA – Unlawful Re-Arrest and Re-Incarceration**

20 123. Ms. Sun re-alleges and incorporates herein by reference, as if set forth fully
21 herein, the allegations in all the preceding paragraphs.

22 124. Ms. Sun was previously released by Respondents because she did not pose a
23 danger or flight risk. As long as she complies with the conditions of her release, Respondents
24 have authority to revoke release only if circumstances have changed—i.e., she has violated a
25 condition of release or there is a “significant” likelihood that she will be removed in the
26 reasonable foreseeable future. 8 C.F.R. § 241.13(i)(1), (2); 8 C.F.R. § 1231(a)(6).

27 125. Were Respondents to revoke her release, their actions would be arbitrary,
28 capricious, an abuse of discretion, and contrary to law. 5 U.S.C. § 706(a)(2)(A). The fact that a

1 decision-making process involves discretion does not prevent an individual from having a
2 protectable liberty interest. *Young*, 520 U.S. at 150; *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d
3 993, 1001 (N.D. Cal 2018). Just like people on pre-parole, parole, probation status, bail, or bond
4 have a liberty interest, so too does Ms. Sun have a liberty interest in remaining out of custody on
5 her Form I-220B OSUP. *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019). She should
6 therefore be provided a full and fair hearing before a neutral arbiter where the government bears
7 the burden of showing that circumstances have changed such that her removal is reasonably
8 foreseeable, and otherwise evidence of her dangerousness and flight risk is established by clear
9 and convincing evidence. *Id.*

10 **FIFTH CAUSE OF ACTION**

11 **Violation of the INA and Applicable Regulations – Re-Arrest and Re-Incarceration**

12 126. Ms. Sun re-alleges and incorporates herein by reference, as if set forth fully
13 herein, the allegations in all the preceding paragraphs.

14 127. The INA provides for detention during the ninety-day “removal period” that
15 begins immediately after a noncitizen’s order of removal becomes final. 8 U.S.C. § 1231(a)(1).
16 After the ninety-day removal period, the INA and its applicable regulations provide that
17 detaining a noncitizen is generally permissible only upon notice to the noncitizen and after an
18 individualized determination of dangerousness and flight risk. *See* 8 U.S.C. § 1231(a)(6); 8
19 C.F.R. § 241.4(d), (f), (h) & (k).

20 128. Respondents are not permitted to detain Ms. Sun on the basis of her prior order
21 of removal and without establishing to a neutral adjudicator, by clear and convincing evidence,
22 that her removal is reasonably foreseeable and that she is a danger to the community or a flight
23 risk. This is especially true where, as here, Ms. Sun received a determination from the agency in
24 June 2017 when it issued her a Form I-220B and permitted her to remain out of custody in the
25 first place. 8 C.F.R. § 241.13(i)(2)-(3).

26 **SIXTH CAUSE OF ACTION**

27 **Due Process, U.S. Const. amend. V, and APA, 5 U.S.C. § 706(2)(D)**

28 **Constitutionally Inadequate Procedures Regarding Third Country Removal**

1 129. Ms. Sun re-alleges and incorporates herein by reference, as if set forth fully
2 herein, the allegations in all the preceding paragraphs.

3 130. The Due Process Clause of the Fifth Amendment requires sufficient notice and
4 an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend.
5 V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F.Supp. 1243,
6 1252 (E.D. Cal. 1994) (“[D]ue process requires that government action falling within the clause’s
7 mandate may only be taken where there is notice and an opportunity for hearing.”).

8 131. Ms. Sun has a protected interest in her life. Thus, prior to any third country
9 removal, she must be provided with constitutionally compliant notice and an opportunity to
10 respond and contest that removal if she has a fear of persecution or torture in that country.

11 132. The INA, FARRA, and implementing regulations further mandate meaningful
12 notice and opportunity to present a fear-based claim to an IJ before ICE deports a person to a
13 third country.

14 133. Ms. Sun has a due process right to meaningful notice and opportunity to present
15 a fear-based claim to an IJ before DHS deports her to a third country. *See, e.g., Aden v. Nielsen,*
16 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). She also has a due process right to
17 implementation of a process or procedure to afford these protections. *See, e.g., McNary v.*
18 *Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Ms. Sun further has a due process right to
19 not be re-detained because Respondents have no procedural protections to ensure meaningful
20 notice and an opportunity to present a fear-based claim prior to removal to a third country.
21 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The APA likewise compels a reviewing court to
22 “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without
23 observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

24 134. By failing to implement a process or procedure to afford Ms. Sun meaningful
25 notice and opportunity to present a fear-based claim to an IJ before DHS deports a person to a
26 third country and by re-detaining previously released individuals pursuant to the July 9, 2025
27 “Guidance,” Respondents would violate Ms. Sun’s substantive and procedural due process rights
28 and are not implementing procedures required by the INA, FARRA, and the implementing

1 regulations.

2 135. Accordingly, the Court should declare that Respondents would violate Ms. Sun's
3 constitutional right to due process and that the Due Process Clause affords her the right to a
4 process and procedure ensuring that DHS provides meaningful notice and opportunity to present
5 a fear-based claim to an IJ before DHS deports her to a third country.

6 136. The Court should enjoin Respondents from failing to provide Ms. Sun with
7 meaningful notice and opportunity to present a claim for protection to an IJ before DHS deports
8 her to a third country.

9 137. For these reasons, Ms. Sun's removal to any third country without adequate notice
10 and an opportunity to apply for relief under the CAT would violate her due process rights, as
11 well as her rights under the INA, FARRA, and the implementing regulations. The only remedy
12 of this violation is for this Court to order that she not be summarily removed to any third country
13 unless and until she is provided constitutionally adequate procedures.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the Petitioner prays that this Court grant the following relief:

16 (1) Assume jurisdiction over this matter;

17 (2) Enjoin ICE from re-arresting Ms. Sun unless and until a hearing can be held
18 before a neutral adjudicator to determine whether her re-incarceration would
19 be lawful because the government has shown that she is a danger or a flight
20 risk and that her removal is reasonably foreseeable by clear and convincing
21 evidence;

22 a. At any such hearing, the neutral arbiter must consider whether, in lieu
23 of incarceration, alternatives to detention exist to mitigate any risk
24 established by the government;

25 (3) Declare that Ms. Sun cannot be re-arrested unless and until she is afforded a
26 hearing on the question of whether her re-incarceration would be lawful—i.e.,
27 whether the government has demonstrated to a neutral adjudicator that she is
28

1 a danger or a flight risk and that her removal is reasonably foreseeable by
2 clear and convincing evidence;

3 a. At any such hearing, the neutral arbiter must consider whether, in lieu
4 of incarceration, alternatives to detention exist to mitigate any risk
5 established by the government;

6 (4) Order that Ms. Sun cannot be removed to any third country without first being
7 provided constitutionally compliant procedures, including:

8 a. Written notice to Ms. Sun and counsel of the third country to which she
9 may be removed, in a language that Ms. Sun can understand, and
10 provided at least twenty-one (21) days before any such removal;

11 b. A meaningful opportunity for Ms. Sun to raise a fear of return for
12 eligibility for protection under the CAT, including, at a minimum, a
13 reasonable fear interview before a DHS officer;

14 c. If Ms. Sun demonstrates a reasonable fear during the interview, DHS
15 must move to reopen her underlying removal proceedings so that she
16 may apply for relief under the CAT;

17 d. If it is found that Ms. Sun does not demonstrate a reasonable fear during
18 the interview, she must be provided a meaningful opportunity, and a
19 minimum of fifteen days, to seek to move to reopen her underlying
20 removal proceedings to challenge potential third country removal;

21 (5) Award reasonable costs and attorney fees; and

22 (6) Grant such further relief as the Court deems just and proper.

23 Dated: August 21, 2025

Respectfully submitted,

24 /s/ Johnny Sinodis

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Ms. Sun because I am one of her attorneys. I have discussed with Ms. Sun the events described in the Petition and Complaint. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Executed on this August 21, 2025, in New York City, New York.

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