

Johnny Sinodis (Cal. Bar #290402)
Van Der Hout LLP
360 Post St., Suite 800
San Francisco, CA 94108
Telephone: (415) 981-3000
Facsimile: (415) 981-3003
ndca@vblaw.com

Marie Vincent (Cal. Bar #286840)
Pangea Legal Services
391 Sutter St., Suite 500
San Francisco, CA 94108
Telephone: (415) 254-0475
marie@pangealegal.org

Attorneys for Petitioner-Plaintiff
Qian SUN

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

Qian SUN,

Petitioner-Plaintiff,

v.

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

Respondents-Defendants.

Case No. 5:25-cv-02198-JLS-JC

**PETITIONER-
PLAINTIFF'S REPLY IN
SUPPORT OF MOTION
FOR AN EX PARTE
TEMPORARY
RESTRAINING ORDER
AND A PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration,
Request for Declaratory and
Injunctive Relief

TABLE OF CONTENTS

STANDARD OF REVIEW 1

ARGUMENT 2

I. Petitioner is “in custody.” 2

II. Petitioner’s claims are ripe. 4

III. The Court has jurisdiction to review Petitioner’s claims. 5

A. Section 1252(g) does not apply. 5

B. Neither §1252(a)(5) nor 1252(b)(9) apply. 6

IV. Petitioner has established a likelihood of success or, at the very least, raised serious questions. 7

A. Petitioner has a weighty liberty interest. 8

B. The risk of erroneous deprivation is high because Respondents assert they can arrest Petitioner for any reason, and the post-deprivation framework is insufficient to protect her constitutional rights. 9

C. ICE’s interest in re-incarcerating Petitioner without a hearing is nonexistent, and the burden on Respondents is far outweighed by Petitioner’s interests. 10

V. Petitioner is likely to suffer irreparable harm in the absence of a TRO and the balance of equities and the public interest tips sharply in her favor. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aden v. Nielsen</i> , 409 F. Supp. 3d 998 (W.D. Wash. 2019).....	6, 7
<i>Al Otro Lado v. Wolf</i> , 497 F. Supp. 3d 914 (S.D. Cal. 2020).....	1
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	1
<i>Arostegui-Maldonado v. Baltazar</i> , — F., 2025 WL 2280357 (D. Colo. Aug. 8, 2025)	6
<i>Baird v. Bonta</i> , 81 F.4th 1036 (9th Cir. 2023)	12
<i>Castro-Cortez v. INS</i> , 239 F.3d 1037 (9th Cir. 2001).....	11
<i>Center for Biological Diversity v. Brennan</i> , 571 F.Supp.2d 1105 (2007).....	2
<i>Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.</i> , 840 F.2d 701 (9th Cir. 1988).....	1
<i>Chalkboard, Inc. v. Brandt</i> , 902 F.2d 1375 (9th Cir.1989).....	11
<i>Delgado v. Quarantillo</i> , 643 F.3d 52 (2d Cir. 2011).....	7
<i>DHS, et al. v. D.V.D., et al.</i> , No. 24A1153, 2025 WL 1732103 (June 23, 2025).....	5
<i>Doe v. Becerra</i> , 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	2, 10
<i>Dow v. Circuit Court of First Circuit Through Huddy</i> , 995 F.2d 922 (9th Cir. 1993).....	3

1	<i>D.V.D. v. D.H.S.</i> ,	
2	<u>778 F. Supp. 3d 355</u> (D. Ma. Apr. 18, 2025)	5
3	<i>Gagnon v. Scarpelli</i> ,	
4	<u>411 U.S. 778</u> (1973)	8, 9
5	<i>Garcia v. Andrews</i> ,	
6	<u>2025 WL 1927596</u> (E.D. Cal. July 14, 2025)	2, 6, 10
7	<i>Gonzalez-Fuentes v. Molina</i> ,	
8	<u>607 F.3d 864</u> (1st Cir. 2010)	8
9	<i>GoTo.com, Inc. v. Walt Disney, Co.</i> ,	
10	<u>202 F.3d 1199</u> (9th Cir. 2000)	1
11	<i>Guillermo M. R. v. Kaiser</i> ,	
12	--- F.Supp.3d. ---, <u>2025 WL 1983677</u> (N.D. Cal. July 17, 2025)	Passim
13	<i>Hensley v. Municipal Court</i> ,	
14	<u>411 U.S. 345</u> (1973)	3
15	<i>Hernandez v. Sessions</i> ,	
16	<u>872 F.3d 976</u> (9th Cir. 2017)	11, 12
17	<i>Hoac v. Becerra</i> ,	
18	<u>2025 WL 1993771</u> (E.D. Cal. July 16, 2025)	8
19	<i>Hurd v. District of Columbia</i> ,	
20	<u>864 F.3d 671</u> (D.C. Cir. 2017)	8
21	<i>J.E.F.M. v. Lynch</i> ,	
22	<u>837 F.3d 1026</u> (9th Cir. 2016)	7
23	<i>J.R. v. Bostock</i> ,	
24	<u>2025 WL 1810210</u> (W.D. Wash. June 30, 2025)	6
25	<i>Jennings v. Rodriguez (Rodriguez</i> ,	
26	<u>583 U.S. 281</u> (2018)	5, 7
27	<i>Johnson v. Williford</i> ,	
28	<u>682 F.2d 868</u> (9th Cir. 1982)	9

1	<i>Jones v. Cunningham,</i>	
2	<u>371 U.S. 236</u> (1963).....	3
3	<i>Jorge M.F. v. Jennings,</i>	
4	<u>534 F. Supp. 3d 1050</u> (N.D. Cal. Apr. 14, 2021).....	3, 4
5	<i>Martinez v. Napolitano,</i>	
6	<u>704 F.3d 620</u> (9th Cir. 2012).....	7
7	<i>Meza v. Bonnar, et al.,</i>	
8	<u>2018 WL 2151877</u>	3
9	<i>Moran v. U.S. Dep’t of Homeland Sec.,</i>	
10	<u>2020 WL 6083445</u> (C.D. Cal. Aug. 21, 2020).....	8
11	<i>Morrissey v. Brewer,</i>	
12	<u>408 U.S. 471</u> (1972).....	8, 9
13	<i>Nak Kim Cheuen v. Marin,</i>	
14	<u>2018 WL 1941756</u> (C.D. Cal. Mar. 26, 2018).....	6
15	<i>Ortega v. Bonnar,</i>	
16	<u>415 F. Supp. 3d. 963</u> (N.D. Cal. 2019).....	3, 4
17	<i>Ortega v. Kaiser,</i>	
18	No. 25-CV-05259-JST, <u>2025 WL 1771438</u> (N.D. Cal. June 26, 2025).....	2, 3, 10
19	<i>Ortega v. Kaiser,</i>	
20	No. 25-cv-05259-JST, <u>2025 WL 2243616</u> (N.D. Cal. Aug. 6, 2025).....	4, 6
21	<i>Ortiz Vargas v. Jennings,</i>	
22	No. 20-cv-5785-PJH, <u>2020 WL 5517277</u> (N.D. Cal. Sept. 14, 2020).....	3, 4
23	<i>Phan v. Becerra,</i>	
24	<u>2025 WL 1993735</u> (E.D. Cal. July 16, 2025).....	8
25	<i>Pinchi v. Noem,</i>	
26	<u>2025 WL 1853763</u> (N.D. Cal. July 4, 2025).....	2, 10, 12
27	<i>Pinchi v. Noem,</i>	
28	--- F.Supp.3d ---, <u>2025 WL 2084921</u> (N.D. Cal. July 24, 2025).....	9

1	<i>Reno v. Am.-Arab Anti-Discrimination Committee,</i>	
2	<u>525 U.S. 471</u> (1999).....	5
3	<i>Sied v. Nielsen,</i>	
4	<u>2018 WL 1142202</u> (N.D. Cal. Mar. 2, 2018).....	5, 6
5	<i>Singh v. Andrews,</i>	
6	No. 1:25-cv-801-KES-SKO, <u>2025 WL 1918679</u> (E.D. Cal. July 11, 2025) ..	2, 10
7	<i>Singh v. Gonzales,</i>	
8	<u>499 F.3d 969</u> (9th Cir. 2007).....	7
9	<i>Trump v. International Refugee Assistance Project,</i>	
10	<u>582 U.S. 571</u> (2017).....	2
11	<i>U.S. v. Hovsepian,</i>	
12	<u>359 F.3d 1144</u> (9th Cir. 2004).....	5
13	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
14	<u>555 U.S. 7</u> (2008).....	1
15	<i>Young v. Harper,</i>	
16	<u>520 U.S. 143</u> (1997).....	8, 9
17	<i>Zadvydas v. Davis,</i>	
18	<u>533 U.S. 678</u> (2001).....	8, 10, 11
19	<i>Zakzouk v. Becerra, 25-CV-06254 (RFL),</i>	
20	<u>2025 WL 2097470</u> (N.D. Cal. Jul. 26, 2025).....	8
21	<i>Zepeda v. INS,</i>	
22	<u>753 F.2d 719</u> (9th Cir. 1983).....	12
23	<i>Zinerman v. Burch,</i>	
24	<u>494 U.S. 113</u> (1990).....	4
25		
26	Statutes	
27	<u>8 U.S.C. §1231(a)(1)(B)(i)</u>	8
28		

Regulations

<u>8 C.F.R. §241.4(l)</u>	8
<u>8 C.F.R. § 241.4(e)-(f)</u>	9
<u>8 C.F.R. § 241.13</u>	9

1 Respondents' opposition only serves to underscore why judicial intervention
2 is necessary. If ICE has no intention to re-arrest Petitioner, Respondents could say
3 that. They have not. Respondents also notably do not assert that there has been a
4 material change in circumstances or that Petitioner's removal is now reasonably
5 foreseeable. Instead, Respondents repeatedly contend that they can re-arrest
6 Petitioner for any reason at any time. This chilling argument supportive of totally
7 unchecked authority to re-incarcerate fails, as others courts have found. This Court
8 should therefore grant a temporary restraining order (TRO) and thereafter convert
9 it into a preliminary injunction (PI) for the duration of these proceedings, as
10 Petitioner has clearly established a likelihood of success on the merits, *Winter v.*
11 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), and, at the very least, serious
12 questions going to the merits coupled with hardships tipping "sharply" in her favor,
13 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

14 STANDARD OF REVIEW

15 Petitioner overwhelmingly establishes a likelihood of success on the merits,
16 *Winter*, 555 U.S. at 20, and, at the very least, "serious questions" as to the merits of
17 her claims, *Alliance for the Wild Rockies*, F.3d 1127. Petitioner warrants a TRO
18 under either standard.

19 Respondents wrongly assert that Petitioner seeks a mandatory injunction.
20 Opp. at 3. Not so. Petitioner seeks a *prohibitory* injunction that merely maintains
21 the status quo. Prohibitory injunctions prevent a party from taking a particular
22 action and "preserve[s] the status quo pending a determination of the action on the
23 merits." *Chalk v. U.S. Dist. Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 704 (9th Cir.
24 1988).

25 "The status quo ante litem refers not simply to any situation before the filing
26 of a lawsuit, but instead to the *last uncontested status* which preceded the pending
27 controversy." *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir.
28 2000) (emphasis added); see also *Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 925

(S.D. Cal. 2020). Here, the status quo is Petitioner living at liberty, exercising her right to freedom for the past eight years.¹

Ordering that Petitioner be provided with a pre-deprivation hearing prior to any re-detention, *during the pendency of these proceedings*, is well within this Court's authority. *Center for Biological Diversity v. Brennan*, 571 F.Supp.2d 1105 (2007). It would protect Petitioner's rights on a *temporary basis* and ensure she may continue to litigate the merits of her proceedings free from unlawful custody. *Trump v. International Refugee Assistance Project*, 582 U.S. 571, 580 (2017) ("The purpose of...interim equitable relief is not to conclusively determine the rights of the parties...but to balance the equities as the litigation moves forward."). Courts have granted pre-deprivation hearings to similarly situated noncitizens—through preliminary relief.² This Court should do the same.

ARGUMENT

I. Petitioner is "in custody."

Respondents wrongly aver that Petitioner is not in custody, Opp. at 3-4, when

¹ Even if the Court found Petitioner were seeking a mandatory injunction, the record still overwhelmingly weighs in her favor.

² *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Rodríguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D. Cal. June 14, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *1, *3 (N.D. Cal. July 4, 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); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, ECF 29 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-cv-01757-DC-JDP, ECF 22 (E.D. Cal. July 16, 2025) (same); *Guillermo M. R. v. Kaiser*, --- F.Supp.3d. ---, 2025 WL 1983677, at *1 (N.D. Cal. July 17, 2025); Sinodis Decl. at Exs. A-F (*T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025); *Zhiyu Yang v. Kaiser*, et al., 25-cv-06323-JD (N.D. Cal. July 30, 2025); *Hernandez Escalante v. Noem*, et al., No. 9:25-cv-00182-MJT-CLS (E.D. Tx. Aug. 2, 2025); *Yuhua Yang v. Kaiser*, No. 25-cv-02205-DAD-AC (E.D. Cal. Aug. 19, 2025); *Rodriguez-Flores v. F. Semaia*, et al., No. 25-cv-6900-JGB (C.D. Cal. Aug. 14, 2025)).

1 she is. As Respondents acknowledge, “[a]n individual does not need to be in actual
2 physical custody to seek habeas relief; the ‘in custody’ requirement may be satisfied
3 where an individual’s release from detention is subject to specific conditions or
4 restraints.” *Id.* at 3. The custody requirement is satisfied so long as there is a
5 significant restraint on her liberty “not shared by the public generally.” *Jones v.*
6 *Cunningham*, 371 U.S. 236, 239-40 (1963). A parolee is “in custody” because
7 parole restrictions “significantly restrain petitioner’s liberty to do those things
8 which in this country free [people] are entitled to do.” *Id.* at 243. Similarly, a person
9 released on their own recognizance is also “in custody” due to “the conditions
10 imposed on petitioner as the price of his release.” *Hensley v. Municipal Court*, 411
11 U.S. 345, 348-49 (1973); *see also Dow v. Circuit Court of First Circuit Through*
12 *Huddy*, 995 F.2d 922, 923 (9th Cir. 1993) (sentence mandating class attendance
13 constitutes custody).

14 Thus, Petitioner is in custody for purposes of this petition and complaint
15 given the restrictions required by her Order of Supervision. Dkt. 6 at 6 (describing
16 conditions).

17 Respondents erroneously assert that Petitioner’s claim is not “cognizable.”
18 *Opp.* at 3. They are wrong. Petitioner’s constitutional as-applied claims are
19 cognizable, as numerous courts have found. *See, e.g., Ortega v. Bonnar*, 415 F.
20 Supp. 3d 963 (N.D. Cal. 2019); *Meza v. Bonnar, et al.*, No. 18-cv-02708, 2018 WL
21 2151877; *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277 (N.D.
22 Cal. Sept. 14, 2020); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050 (N.D. Cal. Apr.
23 14, 2021); Declaration of Johnny Sinodis dated Aug. 25, 2025 (Second Sinodis
24 Decl.) at Ex. F (*Rodríguez Diaz*) (prohibiting the government from re-detaining
25 petitioner without notice and a hearing before a neutral adjudicator); *id.* at Ex. A
26 (*T.P.S*) (same); *id.* at Ex. B (*Yang*) (same); *Ortega v. Kaiser*, No. 25-CV-05259-
27 JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025) (same); *Guillermo M.R. v.*
28 *Kaiser*, -- F. Supp. 3d --, 2025 WL 1983677 (N.D. Cal. July 17, 2025) (same);

1 *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 2243616 (N.D. Cal. Aug. 6,
2 2025) (same). This Court should find the same.

3 **II. Petitioner's claims are ripe.**

4 Respondents claim Petitioner's fear is "speculative," yet they never state they
5 do not intend to re-arrest her on August 27. Respondents instead repeatedly assert
6 they can re-arrest her at any time. Opp. at 5-9. Courts have rejected identical
7 ripeness arguments made elsewhere. *See, e.g., Ortega*, 415 F. Supp. 3d at 969; *Jorge*
8 *M.F.*, 534 F. Supp. 3d at 1055-56. Just like in *Ortega* and *Jorge M.F.*, Respondents'
9 conduct here "implies that the government may act on its presumed authority to re-
10 arrest Petitioner at any moment" because they have refused to provide any
11 assurance that she will not be re-arrested. *Jorge M.F.*, 534 F. Supp. 3d at 1055-56.

12 Respondents state Petitioner would be able to challenge her re-incarceration
13 if she were re-arrested. Opp. at 7. But if Petitioner were prohibited from bringing
14 her claim until after she is detained, her claim would evade judicial review. The
15 only way in which she can seek review of whether any revocation of her release is
16 lawful is prior to any arrest, and "[t]hat right can only be protected through a
17 challenge brought prior to [her] re-detention." *Jorge M.F.*, 534 F. Supp. 3d at 1056
18 (citing *Ortega*, 415 F. Supp. 3d at 969).

19 ICE must therefore be required to establish that a change in material
20 circumstances warrants her re-confinement prior to any re-arrest. *See Burch*, 494
21 U.S. at 127 (the Constitution generally "requires some kind of a hearing *before* the
22 State deprives a person of liberty or property."). Like in *Ortega*, *Ortiz Vargas*, *Jorge*
23 *M.F.*, *Rodríguez Diaz*, *T.P.S.*, *Yang*, and others—where injunctive relief was
24 granted—if Petitioner is re-arrested, she will already have suffered the injury she
25 seeks to avoid.

26 Moreover, Petitioner's fear of re-arrest is not based only on "two news
27 articles." Opp. at 8. Her fear is grounded in public statements made by ICE,
28 numerous reports, DHS policies, and more than a dozen cases cited in her motion

1 where similarly situated noncitizens were re-arrested for no lawful reason. Her fears
2 have only been solidified given that Respondents have refused to provide any
3 assurance that she will not be re-arrested, and their Opposition repeatedly
4 erroneously claims they have authority to re-arrest whenever. For Respondents to
5 suggest that Petitioner's fear of unlawful re-arrest is speculative is therefore
6 deceptive, at best.³

7 **III. The Court has jurisdiction to review Petitioner's claims.**

8 In *D.V.D. v. DHS*, the court addressed identical jurisdictional arguments
9 advanced by the government in opposition to plaintiffs' custody-related and third-
10 country-removal-related claims and dismissing them, concluding that it had
11 jurisdiction. 778 F. Supp. 3d 355, 370-78 (D. Ma. Apr. 18, 2025). Though the
12 Supreme Court subsequently stayed the court's nationwide injunction, it did not
13 disturb the court's jurisdictional analysis. *DHS, et al. v. D.V.D., et al.*, No. 24A1153,
14 2025 WL 1732103 (June 23, 2025). This Court should therefore follow *D.V.D.*'s
15 instructive reasoning.

16 **A. Section 1252(g) does not apply.**

17 Section 1252(g) applies only to three discrete actions: a "decision or action"
18 to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." *Reno v.*
19 *Am.-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999); *see*
20 *also Jennings v. Rodriguez (Rodriguez IV)*, 583 U.S. 281, 294 (2018). The Ninth
21 Circuit has consistently held that "§1252(g) should be interpreted narrowly." *Sied*
22 *v. Nielsen*, 2018 WL 1142202, at *21 (N.D. Cal. Mar. 2, 2018) (citing *U.S. v.*
23 *Hovsepien*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc)). "Section 1252(g) does
24 not divest courts of jurisdiction over cases that do not address prosecutorial
25 discretion and address a purely legal question, which does not challenge the
26 Attorney General's discretionary authority." *Id.*

27
28 ³ Respondents are also actively following its policy to meet daily arrest quotas and
to remove noncitizens to third countries. Dkt. 1 at ¶¶ 37, 94-106.

1 Contrary to Respondents’ argument, Opp. at 2, 6, Petitioner does not contest
2 the execution of her removal order. As explained in her motion, although the IJ
3 ordered Petitioner removed to China, he also granted her CAT protection because
4 she would be tortured if returned there. Dkt. 3-2 at Exs. C-D. Respondents admit
5 this was the outcome of Petitioner’s removal proceedings. Opp. at 1. Accordingly,
6 Respondents are legally *prohibited* from executing her removal order to China, and
7 that has been the case since February 2017.

8 Petitioner also does not request a stay of her removal order—the IJ has
9 already found she cannot be removed to China. Instead, she merely requests that
10 she be provided notice and a hearing before a neutral decisionmaker regarding
11 whether her re-arrest and re-incarceration would be justified. Dkt. 6 at 1. These
12 claims challenge only her re-detention, and such claims are not barred by § 1252(g).
13 Second Sinodis Decl. at Ex. C (*Hernandez Escalante* R&R at 5-6); *id.* at Ex. D
14 (*Yuhua Yang* at 5-6); *see also Garcia*, No. 2:25-cv-01884-TLN-SCR, 2025 WL
15 1927596, at *1 n.1 (“Petitioner’s claim is not a challenge to a removal order but
16 rather, that his redetention is unconstitutional. As such, § 1252(g) is
17 inapplicable[.]”); *Nak Kim Cheuen v. Marin*, No. 17-cv-01898-CJC-GJS, 2018 WL
18 1941756, at *4 (C.D. Cal. Mar. 26, 2018) (same).⁴

19 **B. Neither §1252(a)(5) nor 1252(b)(9) apply.**

20 Because Ms. Sun is not challenging the IJ’s determination that she is
21 removable or her removal order to China, Respondents’ arguments that
22 §§1252(a)(5) and 1252(b)(9) bar review fall flat.

23 In the REAL ID Act of 2005, Congress amended the INA to limit the ways
24

25 ⁴ Challenging removal to a third country without a valid removal order to that third
26 country is also not barred by §1252(g). *See, e.g., Ortega*, 2025 WL 2243616, at *4;
27 *see also J.R. v. Bostock*, No. 2:25-cv-01161-JNW, 2025 WL 1810210, at *3 (W.D.
28 Wash. June 30, 2025); *Arostegui-Maldonado v. Baltazar*, — F. Supp. 3d —, 2025
WL 2280357, at *13 (D. Colo. Aug. 8, 2025); *see generally Aden v. Nielsen*, 409 F.
Supp. 3d 998, 1005–06 (W.D. Wash. 2019).

1 by which an individual might challenge his order of removal. *Singh v. Gonzales*,
2 499 F.3d 969, 977 (9th Cir. 2007) (citing §1252(a)(5)). In turn, §1252(b)(9) limits
3 the forum for those challenges to courts of appeals. *J.E.F.M. v. Lynch*, 837 F.3d
4 1026, 1031 (9th Cir. 2016). Actions that do not challenge final orders of removal
5 are not subject to this channeling scheme. *J.E.F.M.*, 837 F.3d at 1032. “[A] suit
6 brought against immigration authorities is not *per se* a challenge to a removal
7 order.” *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011).

8 By its terms, §1252(a)(5) only bars challenges to “an order of removal.” It
9 “does not eliminate the ability of a court to review claims that are ‘independent of
10 challenges to removal orders.’” *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir.
11 2012) (citation omitted). Petitioner challenges ICE’s intention to re-arrest and re-
12 incarcerate her without first providing a constitutionally compliant hearing before
13 a neutral adjudicator. This Court’s inquiry therefore has nothing to do with her
14 removal order or CAT grant. *See also Aden*, 409 F. Supp. 3d at 1006 (challenge to
15 DHS’s attempts, outside of removal proceedings, to remove petitioner to a third
16 country not barred by §1252(a)(5)).

17 Similarly, §1252(b)(9) does not bar review. In *Rodriguez IV*, the Supreme
18 Court held that §1252(b)(9) did not bar review where the following three facts were
19 present: (1) the noncitizens were not asking for review of a removal order; (2) they
20 were not challenging the decision to detain them in the first instance, or to seek
21 removal to the country where they were ordered removed; and (3) they were not
22 challenging any part of the process by which their removability had been or would
23 be determined. 138 S. Ct. at 841. All three facts are likewise true here. Therefore,
24 §1252(b)(9) does not bar review.

25 **IV. Petitioner has established a likelihood of success or, at the very least,**
26 **raised serious questions.**

27 Respondents repeatedly state they can re-arrest Petitioner at any moment.
28 Opp. at 5-9. They even claim her custody is “mandatory,” when it is not. *Id.* at 5.
More than eight years have passed since the ninety-day removal period ran to zero.

1 *Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (“The
2 removal period begins on the date the Order of Removal becomes administrative[ly]
3 final, 8 U.S.C. §1231(a)(1)(B)(i)...the statute contains no provisions for pausing,
4 reinitiating, or refreshing the removal period after the 90-day clock runs to zero.”).
5 Respondents also aver that DHS *could* remove Petitioner to a third country without
6 any notice or process at all. Opp. at 6 (citing §1231(b)(1)(C)). This is precisely why
7 Petitioner sought this Court’s intervention. Not only will Respondents misinterpret
8 the law, but they will also disregard it completely.

9 **A. Petitioner has a weighty liberty interest.**

10 As an individual in this country, Petitioner has due process rights, including
11 a protected liberty interest in her supervised release. This interest is not diminished
12 by virtue of the supervised nature of her release, *Zadvydas*, 533 U.S. at 696
13 (recognizing the liberty interest of noncitizens on OSUPs), or by the fact that she is
14 subject to an order of removal, *see, e.g., Hoac*, 2025 WL 1993771; *Phan*, 2025 WL
15 1993735; *Zakzouk v. Becerra*, 25-CV-06254 (RFL), 2025 WL 2097470 (N.D. Cal.
16 Jul. 26, 2025); Second Sinodis Decl. at Ex. B (*Zhiyu Yang*).⁵

17 Moreover, the idea that individuals released from imprisonment—even
18 erroneously—are entitled to hearings prior to their re-incarceration is basic to our
19 law. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017)
20 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997), *Gagnon v. Scarpelli*, 411 U.S.
21 778, 782 (1973), and *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gonzalez-*
22 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682

23
24 ⁵ The one case Respondents cite for the proposition that Petitioner does not have a
25 protected interest, *Moran v. U.S. Dep’t of Homeland Sec.*, 2020 WL 6083445, at *9
26 (C.D. Cal. Aug. 21, 2020), dealt with a facial (rather than as-applied) challenge to
27 8 C.F.R. §241.4(l) and did not involve a noncitizen granted CAT protection who
28 was in compliance with the terms of their OSUP and whose removal was not
reasonably foreseeable. For these reasons, as well as the fact that Petitioner has
provided an overwhelming amount of case law strongly supporting her position,
Moran is irrelevant.

1 F.2d 868, 873 (9th Cir. 1982). It applies to prisoners released on parole, probation,
2 and even due to judicial error. *Id.* It rests on the principle that people given freedom
3 should not have it taken away without a pre-deprivation hearing where they can
4 raise any legal objection to re-imprisonment. Dkt. 6 at 10-12 (even person whose
5 freedom is lawfully revocable has a liberty interest entitling him to due process
6 before re-incarceration).

7 Here, ICE's regulatory authority to unilaterally re-detain Petitioner is
8 proscribed by the Due Process Clause because it is well-established that individuals
9 released from incarceration have a liberty interest in their freedom. *See Young*, 520
10 U.S. at 146-47; *Gagnon*, 411 U.S. at 781-82; *Morrissey*, 408 U.S. at 482-483;
11 *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *3. To protect that interest, on the
12 particular facts of Petitioner's case, due process requires notice and a
13 constitutionally compliant hearing *prior to any re-detention*.

14 **B. The risk of erroneous deprivation is high because Respondents**
15 **assert they can arrest Petitioner for any reason, and the post-**
16 **deprivation framework is insufficient to protect her constitutional**
17 **rights.**

18 Under the process Respondents maintain is lawful—which affords Petitioner
19 no meaningful process whatsoever—ICE can re-detain her at any point. Opp. at 6-
20 7. “This framework ‘provides no opportunity to have a neutral party evaluate ICE’s
21 unilateral determination of the contested facts.’” Second Sinodis Decl. at Ex. D
22 (*Yang* at 12) (citing *Guillermo M.R.*, -- F. Supp. 3d. --, 2025 WL 1983677, at *7).
23 Thus, the regulations are insufficient to protect her due process rights.

24 After re-arrest, ICE again makes its own, one-sided custody determination
25 and can decide whether the agency wants to hold Petitioner. 8 C.F.R. § 241.4(e)-
26 (f). While Respondents cite 8 C.F.R. § 241.13 to claim that this regulation provides
27 Petitioner the opportunity to submit evidence to show she will not be removed in
28 the reasonably foreseeable future, Opp. at 7, Respondents fail to note that the
regulations specify that noncitizens can only submit such evidence or information

1 in the context of an interview promptly *after* their re-detention.

2 Nevertheless, Petitioner has provided such evidence and information through
3 this motion for TRO and the underlying petition, which is the only means by which
4 she can seek meaningful review in his circumstances.

5 **C. ICE’s interest in re-incarcerating Petitioner without a hearing is**
6 **nonexistent, and the burden on Respondents is far outweighed by**
7 **Petitioner’s interests.**

8 Petitioner seeks narrow relief—if ICE wishes to re-arrest her, ICE must
9 demonstrate that circumstances have materially changed since her release, such that
10 detention is warranted before any arrest. Respondents’ argument that no such
11 hearing is required disregards the principle that civil detention comports with due
12 process only when a “special justification” outweighs the “*individual’s*
13 *constitutionally protected interest in avoiding physical restraint.*” *Zadvydas*, 533
14 U.S. at 690 (emphasis added). It also runs counter to the weight of case law holding
15 that ICE must demonstrate that a noncitizen’s re-incarceration is justified before re-
16 arresting them. *See Dkt. 6 at 10* (collecting cases).⁶

17 Respondents do not contend that ICE’s interest in detaining Petitioner has
18 increased. Respondents implicitly concede she has not “violated the terms of her
19 OSUP,” and they do not assert that there has been any material change in
20 circumstances. Opp. at 8. Respondents also ignore that Petitioner has appeared for
21 check-ins with ICE and each time ICE determined that detention was not warranted.

22 Respondents’ interest in re-incarcerating Petitioner is even further reduced
23 because removal is clearly not reasonably foreseeable. At no point do Respondents
24 claim to have a travel document that would facilitate her removal.

25 Finally, the procedure that Petitioner seeks is standard for the government. It

26 ⁶ *See also Doe*, -- F. Supp. 3d --, 2025 WL 691664, *8; *Ortega*, No. 25-CV-05259-
27 JST, 2025 WL 1771438; *Pinchi*, 2025 WL 1853763, at *1, *3; *Singh*, 2025 WL
28 1918679; *Garcia*, 2025 WL 1927596, at *6; *Phan*, No. 2:25-cv-01757-DC-JDP,
ECF 22; *Hoac*, No. 2:25-cv-01740-DC-JDP, ECF 29; *Guillermo*, --- F.Supp.3d. ---
2025 WL 1983677, at *1.

1 does not cause additional fiscal and administrative hurdles, and Respondents have
2 not suggested otherwise. It would, however, provide Petitioner with safeguards to
3 ensure her due process rights are protected. Permitting Petitioner to remain free
4 from custody until ICE assesses and demonstrates to a neutral adjudicator that her
5 re-incarceration is justified is far *less* costly and burdensome for the government
6 than detaining her. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

7 Such a hearing is much more likely to produce accurate determinations
8 regarding the reasonable foreseeability of her removal, and whether she otherwise
9 poses a danger or flight risk. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381
10 (9th Cir.1989) (the “risk of error is considerable when just determinations are made
11 after hearing only one side”). “A neutral judge is one of the most basic due process
12 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
13 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). This also
14 would not diminish the Respondents’ interest in the “enforcement of the United
15 States’ immigration laws.” *Opp.* at 9.

16 Because immigration detention is civil, it can have no punitive purpose.
17 Respondents’ only interests in holding an individual in immigration detention can
18 be to prevent danger to the community or flight risk. *See Zadvydas*, 533 U.S. at 690.
19 Respondents have not claimed that Petitioner is a danger or a flight risk.
20 Furthermore, Petitioner cannot be removed to China—the only country ICE has
21 attempted to remove her to. And even if DHS were to obtain a travel document to
22 a third country, Petitioner does *not* need to be detained for Respondents to provide
23 her the process which she would be due.

24 ***

25 Thus, Petitioner is likely to succeed (or at least raises serious questions) on
26 her claims presented in the TRO motion.

27 **V. Petitioner is likely to suffer irreparable harm in the absence of a TRO**
28 **and the balance of equities and the public interest tips sharply in her**
favor.

1 The likelihood of immediate irreparable harm is high, as shown by the ever
2 increasing number of cases dealing with DHS's decision to arrest a noncitizen for
3 no other reason than that it can. Because Petitioner is likely to succeed on the merits
4 of her claim (or has at least raised serious questions), and that her claim is
5 constitutional in nature, she has sufficiently demonstrated that she will suffer harm
6 absent immediate injunctive relief. *See, e.g., Pinchi*, 2025 WL 1853763, at
7 *3; *Garcia v. Bondi*, 2025 WL 1676855, *3 (N.D. Cal. June 14, 2025); *Guillermo*,
8 2025 WL 1983677.

9 Here, Respondents ignore the concrete harms custody inflicts, and the
10 specific harms Petitioner would suffer. *See Hernandez*, 872 F.3d at 995 ("noting
11 irreparable harms imposed on anyone subject to immigration detention."). Clearly,
12 absent a TRO, she will suffer irreparable harm. Dkt. 6 at 22-23.

13 "A plaintiff's likelihood of success on the merits of a constitutional claim
14 also tips the merged third and fourth factors decisively in his favor." *Baird v. Bonta*,
15 81 F.4th 1036 1040 (9th Cir. 2023). If a TRO were not granted, Respondents would
16 effectively be granted permission to detain Petitioner in violation of Due Process.
17 "The public interest and the balance of the equities favor 'prevent[ing] the violation
18 of a party's constitutional rights.'" *Id.* (quoting *Melendres*, 695 F.3d at 1002).

19 Respondents do not challenge Petitioner's argument that the government
20 "cannot reasonably assert that it is harmed in any legally cognizable sense by being
21 enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d
22 719, 727 (9th Cir. 1983). Nor will Respondents be injured by an order requiring
23 them to provide a pre-deprivation hearing. Such a hearing is constitutionally
24 mandated under the circumstances, and the government is not injured by being held
25 to the Constitution. *Id.*; *Zepeda*, 753 F.2d at 727.

26 CONCLUSION

27 This Court should therefore grant Petitioner a TRO.

28 Dated: August 25, 2025

Respectfully submitted,

/s/ Johnny Sinodis
Johnny Sinodis
Marie Vincent
Attorneys for Ms. Sun

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Petitioner, certifies that this reply brief contains 4,047 words, which complies with the word limit set by the Court's standing order for civil cases.

Executed this 25th day of August 2025.

/s/ Johnny Sinodis
Johnny Sinodis