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16  
17 **IN THE UNITED STATES DISTRICT COURT**  
18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 **Yan Sun,**

20 *Petitioner,*

21 v.

22 **Jesus Rocha, in his official capacity as Acting**  
23 **Field Office Director, San Diego Field Office,**  
24 **U.S. Immigration and Customs Enforcement,**

25 **Christopher Larose, in his official capacity as**  
26 **Warden, Otay Mesa Detention Center,**

27 **United States Department of Homeland**  
28 **Security,**

**United States Immigration and Customs**  
**Enforcement,**

*Respondents.*

Case No. **'25CV3127 CAB MSB**

**PETITION FOR A WRIT OF HABEAS**  
**CORPUS AND INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. This case challenges the unlawful re-detention of Ms. Yan Sun (“Petitioner” or  
3 “Ms. Sun”), who is currently in the custody of United States Immigration and Customs  
4 Enforcement (“ICE”), at the Otay Mesa Detention Center in Jamul, California.  
5

6 2. On May 11, 2018, an immigration judge granted Ms. Sun’s application for  
7 withholding of removal to the People’s Republic of China, because she faces a clear probability  
8 of future persecution if removed there. *See* 8 U.S.C. § 1231(b)(3) (Restriction on removal to a  
9 country where alien’s life or freedom would be threatened).  
10

11 3. On August 20, 2025, ICE re-detained Ms. Sun without notice and without revoking  
12 her release on an Order of Supervision (“OSUP”).

13 4. The regulations at 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 required ICE to have  
14 revoked Ms. Sun’s OSUP, prior to her re-detention.  
15

16 5. Ms. Sun has been granted protection from removal to China, and there is no  
17 alternative safe third country willing to accept Ms. Sun.

18 6. Any plan to remove Ms. Sun would need to begin before an immigration judge.

19 7. Respondents’ unlawful and punitive detention of Ms. Sun violates the Due Process  
20 Clause of the Fifth Amendment of the U.S. Constitution, the Immigration and Nationality Act  
21 and implementing regulations, and the Administrative Procedure Act.  
22

23 8. Ms. Sun respectfully requests this Court to issue an order directing Respondents  
24 to immediately release her, and to restore the conditions of her supervised release.

25 **PARTIES**

26 9. Petitioner, Ms. Yan Sun, has lived in the United States since January 7, 2009. Ms.  
27 Sun is currently detained at the Otay Mesa Detention Center in Jamul, California.  
28



1 19. Ms. Sun's nonimmigrant visa expired in December 2012.

2 20. In July 2013, Ms. Sun filed an affirmative application for asylum and withholding  
3 of removal in the alternative.  
4

5 21. Ms. Sun sought protection due to the persecution she endured from the Chinese  
6 government, which had physically forced her to undergo two abortions.

7 22. On March 19, 2015, an immigration judge found Ms. Sun suffered past persecution  
8 and was likely to face future persecution if removed to China.

9 23. However, the immigration judge found Ms. Sun had not timely applied for asylum,  
10 and was therefore only eligible for withholding of removal.  
11

12 24. On April 16, 2016, the Board of Immigration Appeals dismissed Ms. Sun's appeal,  
13 and remanded the matter for the completion of security and background checks in connection  
14 with the grant of withholding of removal.

15 25. On May 11, 2018, the immigration judge issued an order granting Ms. Sun  
16 withholding of removal.  
17

18 26. Ms. Sun has continued to work while abiding by the terms and conditions of her  
19 supervised release, also known as an "OSUP."

20 27. Ms. Sun has no criminal history and has never violated the terms and conditions  
21 of her OSUP.  
22

23 28. On August 20, 2025, ICE detained Ms. Sun at a check-in without any notice she  
24 was at risk of being re-detained.

25 29. There are no circumstances indicating that Ms. Sun now poses a flight risk or  
26 danger to the community.  
27

1 30. ICE officers forced Ms. Sun to sign a document that she could not read, and that  
2 was not translated to Mandarin.

3 31. ICE officers threatened to remove Ms. Sun to a third country if she did not sign  
4 the document.

5 32. Ms. Sun has not received this document from ICE during her detention.

6 33. ICE has kept Ms. Sun detained at the Otay Mesa Detention Center.

7 34. On October 10, 2025, the immigration judge denied Ms. Sun's motion for her  
8 release on bond, noting that release was available through habeas corpus proceedings in federal  
9 court.  
10

## 11 LEGAL BACKGROUND

### 12 **A. Due Process Governs Decisions to Revoke an Order of Supervision**

13 35. "The Due Process Clause applies to all persons within the United States, including  
14 aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v.*  
15 *Davis*, 533 U.S. 678, 693 (2001) (citation modified). "Freedom from imprisonment—from  
16 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty  
17 that Clause protects." *Id.* at 690 (2001).

18 36. Under substantive due process doctrine, revocation of a noncitizen's order of  
19 supervision is a restraint on liberty that is only permissible if it serves a "legitimate nonpunitive  
20 objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only  
21 recognized two legitimate objectives of immigration detention; preventing danger to the  
22 community or preventing flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing  
23 constitutional limitations on civil detention).  
24  
25  
26  
27  
28

1 37. “Procedural due process imposes constraints on governmental decisions which  
2 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.  
3 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental  
4 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and  
5 in a meaningful manner.” *Id.* at 333 (citation modified).  
6

7 **B. Procedure for Revoking an Order of Supervision And Removal To Third**  
8 **Countries Without Due Process**

9 38. A noncitizen with a final order of removal “who is not removed within the [90-  
10 day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed  
11 by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day period”).  
12

13 39. A noncitizen may only be detained past the 90-day removal period following a  
14 removal order if found to be “a risk to the community or unlikely to comply with the order of  
15 removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).  
16

17 40. But even where initial detention past the 90-day removal period is authorized, if  
18 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable  
19 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and  
20 should be conditioned on any of the various forms of supervised release that are appropriate in  
21 the circumstances . . . .” *Zadvydas*, 533 U.S. at 699-700.

22 41. Regulations provide the following additional circumstances, beyond those listed  
23 at § 1231(a)(6), which allow for the revocation of an order of supervision and re-detention of a  
24 noncitizen: “(1) the purposes of release have been served; (2) the alien violates any condition of  
25 release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the alien, or any  
26 other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2);  
27  
28

1 *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen  
2 “violates any of the conditions of release”).

3  
4 42. These regulations are intended to provide noncitizens released on an OSUP with  
5 due process protections. *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist.  
6 LEXIS 201411, \*8-9 (S.D. Cal. Oct. 10, 2025).

7 43. The re-detention of a noncitizen in violation of the regulations is unlawful. *Id.* at  
8 8-9 (citing cases).

9  
10 **C. Removal To Third Countries Without Due Process**

11 44. To remove a foreign national to a third country, the INA requires that the Attorney  
12 General—by and through a delegate, such as an immigration judge—first determine that it is  
13 “impracticable, inadvisable, or impossible” to remove Petitioner to China and that the designated  
14 third country “will accept [Petitioner] into that country.” 8 U.S.C. § 1231(b)(2)(E)(vii); *see Himri*  
15 *v. Ashcroft*, 378 F.3d 932, 939 n. 4 (9th Cir. 2004) (8 U.S.C. § 1231(b)(E)(vii) “indisputably  
16 requires the Attorney General to prove that the proposed country of removal is willing to accept  
17 the alien”); *see also Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 344 (2005).

18  
19 45. The statute delegates the authority to the Attorney General, not DHS. 8 U.S.C. §  
20 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. §  
21 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a  
22 country, or countries in the alternative, to which the alien’s removal may be made”).

23  
24 46. To remove a foreign national to a third country, the Attorney General would need  
25 to move to reopen removal proceedings to designate a third country for removal under the  
26 statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014)  
27 (unpublished) (holding that should a new country of removal be designated, “the agency must  
28

1 provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of  
2 his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d  
3 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a  
4 hearing shall be held before the immigration judge so that petitioner may apply for relief from  
5 removal” as to a country not designated in prior proceedings).

7 47. Adherence to that process is necessary to ensure the foreign national has a statutory  
8 right to claim protection in immigration court against removal to a third country where she may  
9 be persecuted or tortured, a form of protection known as withholding of removal, 8 U.S.C.  
10 § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as her right to claim deferral of  
11 removal under CAT. *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in  
12 circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18.

14 48. Due process requires the government to “ask the noncitizen whether he or she fears  
15 persecution or harm upon removal to the designated country and memorialize in writing the  
16 noncitizen’s response. This requirement ensures DHS will obtain the necessary information from  
17 the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and  
18 noncitizen said].” *Aden*, 409 F. Supp. 3d at 1019.

20 49. Any unannounced attempt at a third country removal would violate these statutory  
21 and constitutional procedural protections.

23 50. Several courts have recently granted individual TROs against removal to third  
24 countries without affording the noncitizen due process. *See generally J.R. v. Bostock*, 25-cv-  
25 01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025) (immediately enjoining removal to  
26 “Cuba, Libya, or any third country in the world absent prior approval from this Court”); *Phan*,  
27 2025 WL 1993735, at \*7 (enjoining Respondents from “re-detaining or removing Petitioner to a  
28

1 third country without notice and an opportunity to be heard”); *Hoac*, 2025 WL 1993771, at \*7  
2 (same); *Vaskanyan v. Janecka*, 25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25,  
3 2025); *Ortega v. Kaiser*, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025).

4  
5 **D. The APA Sets Minimum Standards for Final Agency Action**

6 51. The Administrative Procedure Act authorizes judicial review of final agency  
7 action. 5 U.S.C. § 704.

8 52. Final agency actions are those (1) that “mark the consummation of the agency’s  
9 decision making process[,]” and (2) “by which rights or obligations have been determined, or  
10 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation  
11 modified).

12  
13 53. ICE’s decision to re-detain Ms. Sun, without prior revocation of her OSUP or  
14 without written notice, is a final agency action subject to this Court’s review.

15  
16 54. Here, Ms. Sun’s re-detention marked the consummation of ICE’s decision making  
17 process regarding her custody.

18  
19 55. Ms. Sun’s re-detention was an action by which rights or obligations have been  
20 determined, or from which legal consequences flowed, as ICE detained Ms. Sun in violation of  
21 her rights under the Constitution, statute, and regulations.

22 **E. Agencies Must Follow Lawful Rules And Policy**

23 56. Under the *Accardi* doctrine, a foundational principle of administrative law,  
24 agencies must follow their own procedures, rules, and instructions. See *United States ex rel.*  
25 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where  
26 the Board of Immigration Appeals failed to follow procedures governing deportation  
27 proceedings); see also *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals

1 are affected, it is incumbent upon agencies to follow their own procedures . . . even where the  
2 internal procedures are possibly more rigorous than otherwise would be required.”).

3  
4 **CLAIMS FOR RELIEF**

5 **Count One**

6 **Violation of the Fifth Amendment of the U.S. Constitution**  
7 **Substantive Due Process**

8 57. Petitioner incorporates all preceding paragraphs by reference.

9 58. The Due Process Clause of the Fifth Amendment protects against punitive  
10 detention and similar restrictions on a person’s liberty.

11 59. ICE has unlawfully re-detained Ms. Sun, because she had a valid OSUP and did  
12 not receive notice and an opportunity to be heard, as required by the regulations and the Due  
13 Process Clause of the Fifth Amendment.

14 60. Ms. Sun has complied with all terms and conditions of her OSUP.

15 61. No change in circumstances has warranted Ms. Sun’s re-detention.

16 62. Ms. Sun’s arrest and re-detention, therefore, did not bear a reasonable relationship  
17 to the two recognized purposes of immigration detention: preventing danger to the community,  
18 or flight prior to removal.

19 63. Because Respondents had no legitimate, non-punitive objective in re-detaining Ms.  
20 Sun, her re-detention violated her substantive due process rights under the Fifth Amendment of  
21 the U.S. Constitution.  
22

23 **Count Two**

24 **Violation of the Fifth Amendment of the U.S. Constitution**  
25 **Procedural Due Process**

26 64. Petitioner incorporates all preceding paragraphs by reference.

27 65. The Supreme Court’s decision in *Matthews*, 424 U.S. at 333, instructs courts to  
28 balance three factors to determine whether procedural due process is satisfied: (1) the private  
PETITION FOR A WRIT OF HABEAS CORPUS AND INJUNCTIVE RELIEF - 10

1 interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used,  
2 and the probable value, if any, of additional procedural safeguards; and (3) the government’s  
3 interest, including fiscal and administrative burdens that additional or substitute procedural  
4 requirements entail.

5  
6 66. All three factors demonstrate Respondents have violated Ms. Sun’s rights to due  
7 process.

8 67. The first factor, the private interest at issue, favors Ms. Sun. “Freedom from  
9 imprisonment—from government custody, detention, or other forms of physical restraint—lies at  
10 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.”  
11 *Zadvydas*, 533 U.S. at 690.

12  
13 68. The second factor, the risk of erroneous deprivation of liberty and the probable  
14 value of procedural safeguards, favors Ms. Sun.

15 69. To safeguard against erroneous deprivations of liberty, the statute specifies the  
16 limited number of reasons that an order of supervision can be revoked. Regulations specify who  
17 may lawfully revoke the order, and the procedures that must be followed when doing so, including  
18 giving notice and an opportunity to be heard. 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2); *see*  
19 *also id.* § 241.13(i).

20  
21 70. Here, Respondents unlawfully detained Ms. Sun in violation of her procedural due  
22 process protections under the statute, regulations, and the Fifth Amendment. The failure to follow  
23 the requisite procedural safeguards has led to the deprivation of Ms. Sun’s liberty.

24  
25 71. The third factor, the government’s interest, also favors Ms. Sun.

26 72. When the government does not provide the required notice and an opportunity for  
27 a person with an order of supervision to respond, the government is more likely to waste limited  
28

1 financial and administrative resources on the unnecessary detention of people who are neither  
2 flight risks nor dangerous to the community, as is the case with Ms. Sun. Further, because the  
3 government must also allocate resources defending against a habeas corpus petitions in federal  
4 court to compel Respondents to comply with the law, requiring Respondents to instead provide  
5 notice and a meaningful opportunity to respond, prior to revoking an OSUP, reduces the fiscal  
6 and administrative burdens on the government.

7  
8 73. Respondents' re-detention of Ms. Sun, prior to the revocation of her OSUP and  
9 without providing her with the requisite notice and a meaningful opportunity to respond, violated  
10 her procedural due process rights under the Fifth Amendment of the U.S. Constitution.

11  
12 **Count Three**  
13 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**  
14 **Contrary to Law and Constitutional Right**

15 74. Petitioner incorporates all preceding paragraphs by reference.

16 75. Under the APA, a court shall "hold unlawful and set aside agency action . . . found  
17 to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or  
18 immunity." 5 U.S.C. § 706(2)(A), (B).

19 76. The APA's reference to "law" in the phrase "not in accordance with law," "means,  
20 of course, *any* law, and not merely those laws that the agency itself is charged with administering."  
21 *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

22 77. ICE failed to comply with both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 at the time  
23 of Ms. Sun's re-detention.

24 78. ICE never revoked Ms. Sun's OSUP prior to taking her into custody.

25 79. Respondents' re-detention of Ms. Sun was, therefore, arbitrary and capricious  
26 because it violated statute, regulation, and the Constitution.  
27

1 80. An agency decision that “runs counter to the evidence before the agency” is also  
2 arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29,  
3 43 (1983).

4  
5 81. Respondents’ decision to arrest and re-detain Ms. Sun was unlawful, and must be  
6 set aside. 5 U.S.C. § 706(2)(A).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioner requests that this Court:

- 9 A. Exercise jurisdiction over this matter;
- 10 B. Enjoin Petitioner’s removal or transfer outside the jurisdiction of this Court and  
11 the United States pending its adjudication of this petition;
- 12 C. Declare that Petitioner’s detention violates the Due Process Clause of the Fifth  
13 Amendment, the INA and implementing regulations, the APA, and the *Accardi* doctrine;
- 14 D. Order Petitioner’s immediate release;
- 15 E. Award Petitioner costs and reasonable attorney’s fees; and
- 16 F. Grant such other relief as this Court may deem just and proper.

17  
18  
19 November 13, 2025

Respectfully Submitted,

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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. On the basis of documents and discussions with Petitioner's immigration counsel, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

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