

1 Kristina David
2 CA Bar # 346347
3 David Strashnoy Law, PC
4 1901 Avenue of the Stars, Suite 200
5 Los Angeles, CA 90067
6 Tel.: 818-646-7350
7 kristina@strashnoylaw.com

8 Jesse M. Bless
9 MA Bar No. 660713
10 Bless Litigation LLC
11 6 Vineyard Lane
12 Georgetown, MA 01833
13 781.704.3897
14 jesse@blesslitigation.com
15 Attorneys for Petitioner

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

18 **Yan Sun,**

19 Petitioner,

20 v.

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

25 Respondents.

Case No. 25cv3127 CAB MSB

PETITIONER’S REPLY IN SUPPORT
OF HABEAS PETITION AND
MOTION FOR TEMPORARY
RESTRAINING ORDER

26 **I. INTRODUCTION**

27 Petitioner, Ms. Yan Sun, (“Ms. Sun” or “Petitioner”), respectfully responds to
28 Respondents’ Response to Petitioner’s Habeas Petition and Application for Temporary
Restraining Order. [ECF Doc. 8]. This Court has previously indicated that it intends to consolidate
the TRO application with a determination on the Petition’s merits under Fed. R. Civ. P. 65(a)(2).
[ECF Doc. 4]. Based on the information Respondents have provided, the Court should

1 expeditiously grant the Petition as to Grounds One, Two, and Three. [ECF 1] Because Ms. Sun
2 has remained detained in violation of her constitutional rights, she respectfully requests an order
3 directing Respondents to immediately release her from custody and not re-detain unless she is
4 provided with advance notice and an opportunity to respond to any change in circumstances.
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6 For simplicity, this Court's decision in *Thoth Sun v. Noem*, 3:25-cv-02433-CAB-MMP,
7 2025 U.S. Dist. LEXIS 193795, 2025 WL 2800037 (S.D. Cal. Sept. 30, 2025), is an analogous,
8 persuasive decision that counters Respondents' legal claims as to the Court's jurisdiction and the
9 merits. Respondents' latest attempts to justify their unlawful and unconstitutional actions lack
10 merit for the reasons this Court has provided. *Id.*
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12 II. JURISDICTION

13 Respondents argue that the Court lacks jurisdiction over Ms. Sun's claims under 8 U.S.C.
14 § 1252. [Doc. No. 8 at 3-4.] "The Supreme Court's holding in *Zadvydas* squarely contradicts this
15 argument." *Thoth Sun v. Noem*, 2025 U.S. Dist. LEXIS 193795, *4-5 (citing *Zadvydas v. Davis*,
16 533 U.S. 678, 121 S. Ct. 2491, (2001)). There, the Supreme Court rejected the application of §
17 1252 to limit judicial review of indefinite post-removal-period detentions under § 1231(a)(6) and
18 held "that § 2241 habeas corpus proceedings remain available as a forum for statutory and
19 constitutional challenges to post-removal-period detention." *Zadvydas*, 533 U.S. at 687-88. Even
20 the immigration judge who denied Ms. Sun bond understood she had a right to relief in habeas
21 proceedings. [ECF 8-2 at page 16]. Accordingly, this Court has subject matter jurisdiction to
22 consider Ms. Sun's claims. *Thoth Sun*, 2025 U.S. Dist. LEXIS 193795, *5.
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1 **III. MS. SUN’S RE-DETENTION VIOLATED THE GOVERNING**
2 **REGULATIONS AND HER DUE PROCESS RIGHTS**

3 Respondents’ own evidence confirms that ICE re-detained Ms. Sun in violation of law
4 and her rights to due process. [ECF 8-2 at 14-22]. When a non-citizen, like Ms. Sun, is denied
5 asylum, granted withholding of removal under 8 U.S.C. § 1231(b)(3), and ordered removed, they
6 must be detained for ninety days (90) pending the government’s efforts to secure removal to a
7 third country. *See* 8 U.S.C. § 1231(a)(2). This ninety-day period is referred to as the “removal
8 period.” 8 U.S.C. § 1231(a)(1)(A). After the removal period, this statute “limits an alien’s post-
9 removal-period detention to a period reasonably necessary to bring about that alien’s removal
10 from the United States” and “does not permit indefinite detention.” *Zadvydas*, 533 U.S. at 689. A
11 six-month period of post-removal detention constitutes a “presumptively reasonable period of
12 detention.” *Id.* at 701. After this six-month period passes, the petitioner has the burden to
13 “provide[] good reason to believe that there is no significant likelihood of removal in the
14 reasonably foreseeable future.” *Id.* If petitioner satisfies their initial burden, it then shifts to the
15 Government to rebut that showing. *Id.* “[F]or detention to remain reasonable, as the period of
16 prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’
17 conversely would have to shrink.” *Id.* “[O]nce removal is no longer reasonably foreseeable,
18 continued detention is no longer authorized by statute.” *Id.* at 699. In that case, the noncitizen’s
19 release may be conditioned on any of the various forms of conditioned release, including an order
20 of supervision (“OSUP”). *Id.* at 700.

21 Once ICE releases a noncitizen on an Order of Supervision after the mandatory removal
22 period has passed, the regulations limit ICE’s ability to re-detain that noncitizen. 8 C.F.R. §§
23 214.13(f), 214.13(i)(2), 241.4(d); *Nouri v. Herrera*, SA CV 25-1905-JFW (DBT), 2025 U.S. Dist.
24 LEXIS 171809, at *11 (C.D. Cal. Sept. 3, 2025) (internal citation omitted). Relevant here, 8

1 C.F.R. § 241.13(i)(2) provides for “[r]evocation for removal” and allows revocation of release
2 when “on account of changed circumstances, the Service determines that there is a significant
3 likelihood that the alien may be removed in the reasonably foreseeable future.” *Id.* ICE’s own
4 regulations thus place the burden on ICE to show changed circumstances that make removal
5 significantly likely in the reasonably foreseeable future. *Id.* Moreover, § 241.13(i)(3) provides
6 that “[u]pon revocation, the alien will be notified of the reasons for revocation of his or her
7 release.” *Id.*

9 Respondents admit ICE did not comply with either of these requirements. [ECF Doc. 8,
10 8-1, 8-2]. **First**, ICE re-detained Ms. Sun on August 20, 2025, seven years after her release on an
11 OSUP after the removal period under 8 U.S.C. § 1231(a). [ECF Doc. 8-1 ¶¶5-8]. ICE did not
12 provide Ms. Sun with notice or an interview in accordance with the regulations. *Id.* To the extent
13 Respondents claim that § 1231(a)(1) or § 1231(b) allowed ICE to re-start Ms. Sun’s period of re-
14 detention without compliance with the regulations, they are wrong. [ECF Doc. 8 at 5-6]. Ms. Sun
15 removal period ended seven years ago, the 6-month *Zadvydas* presumption had long passed, and
16 ICE had to comply with the regulations prior to taking Ms. Sun into custody, which indisputably
17 did not take place. Respondents issued Ms. Sun a Notice of Revocation of Release on November
18 20, 2025. [ECF 8-2 at 19]. This is three months after ICE re-detained her on August 20, 2025,
19 and seven years since she was released from custody on an order of supervision. [ECF Doc. 8-1
20 ¶6.]. Unlike a typical *Zadvydas* petitioner, who is detained continuously from the time of their
21 final removal order, Ms. Sun was released pursuant to an OSUP and lived at liberty in the United
22 States for seven years. [ECF Doc. 2-1]. By Respondents’ own admission, they had no evidence
23 that Ms. Sun’s removal to a safe third country was any more likely than it was seven years ago.
24 [ECF Doc. 8-1 ¶¶8-9]. Respondents’ detention was unlawful.

1 **Second**, Ms. Sun’s due process claim should not be judged by the current length of her
2 detention or the government’s attempts to justify their detention of Ms. Sun through the actions
3 taken after she filed her habeas petition. [ECF Doc. 8-1, 8-2]. The government’s belated pro forma
4 notice issued on the eve of Respondents’ response to this Court does not excuse Respondents’
5 disregard for the regulatory requirement to show changed circumstances; these actions confirm
6 the violation of law and the deprivation of Ms. Sun’s due process rights. *See Minh Nhat Phan v.*
7 *Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist. LEXIS 201411, *8-9 (S.D. Cal. Oct. 10,
8 2025); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL 2898977, at *3 (S.D. Cal. Oct.
9 10, 2025). “ICE failed to comply with the required procedures, thereby violating Petitioner's due
10 process rights.” *Id.*

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13 **Third**, ICE has not shown any “consider[ation] [of] all the facts of the case including . . .
14 the history of the alien's efforts to comply with the order of removal . . . and the alien's assistance
15 with [ICE's removal] efforts[.]” 8 C.F.R. § 241.13(f). Respondents do not contest that Ms. Sun
16 has complied with the terms of her supervision, that she has no criminal history, and that she
17 remained gainfully employed. [ECF Doc. 1-2 ¶¶10-11]. Nor do Respondents provide any facts or
18 arguments to demonstrate that unless Petitioner is re-detained, she is unwilling or unable to
19 provide the information needed for Respondents to pursue Petitioner’s removal. [ECF Doc. 8, 8-
20 1]. Respondents similarly do not provide any facts or argument that when Respondents are able
21 to secure the necessary documentation to effect Petitioner's removal to a safe third country, that
22 Ms. Sun will fail to comply. *Id.* Indeed, it is Respondents who have failed to meet their own
23 obligations by determining that, “on account of changed circumstances . . . there is a significant
24 likelihood that [Petitioner] may be removed in the reasonably foreseeable future.” 8 C.F.R. §
25 241.13(i)(3). The re-detention of Ms. Sun violated the regulations and her rights to due process,
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1 which warrant an order granting her immediate release. ECF 1; *Reyes v. LaRose*, 25-CV-2959
2 JLS (JLB), *See, e.g.*, 2025 U.S. Dist. LEXIS 225897 *8, 2025 WL 3204733 (S.D. Cal. Nov. 17,
3 2025) (*citing cases*). Respondents’ claims to the contrary lack merit. *See Rodriguez v. Hayes*, 591
4 F.3d 1105, 1117 (9th Cir. 2010) (explaining Section 241.4 “provides the detainee some
5 opportunity to respond to the reasons for revocation”); *cf. Morton v. Ruiz*, 415 U.S. 199, 235
6 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow
7 their own procedures.”); [ECF Doc. 8 at 10-11].
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10 **IV. UNLAWFUL DETENTION CONSTITUTES IRREPARABLE HARM**

11 Respondents’ claim that the unlawful detention of noncitizens is harmless is wrong, and
12 will hopefully never be right.¹ *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018)
13 (“Deprivation of physical liberty by detention constitutes irreparable harm.”) (citation omitted);
14 *Cabrera-Trillo v. Noem*, 3:25-cv-02865-CAB-MSB, 2025 U.S. Dist. LEXIS 227020, *7 (S.D.
15 Cal. Nov. 18, 2025); [ECF Doc. 8 at 10-13]. Re-detaining an individual without lawful
16 justification, separating her from her community, and depriving her of liberty cannot be
17 considered a civil measure. ECF 1-2. “The interest in being free from physical detention [is] the
18 most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S. Ct. 2633
19 (2004). Respondents should not have approached Ms. Sun without prior notice to her legal
20 counsel and handed her a document in English. [ECF 8-1, 8-2]. Respondents’ actions only
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26 ¹ Sections IV and V of this Reply respond to Respondents’ arguments against the issuance of a
27 TRO. Since this Court has stated an intent to issue a ruling on the merits, [ECF Doc. 4], Ms.
28 Sun includes these arguments here for sake of completeness and to leave no doubt that
extraordinary relief and relief on the merits are warranted. [ECF Docs. 1, 2, 2-1].

1 illustrate why stripping Ms. Sun’s liberty was unconstitutional and her immediate release is
2 warranted. *Arevalo*, 882 F.3d at 767.

3 **V. THE EQUITIES FAVOR MS. SUN’S IMMEDIATE RELEASE**

4 Respondents recognize that “[u]ltimately the balance of the relative equities ‘may depend
5 to a large extent upon the determination of the [movant’s] prospects of success,’” [Doc. No. 8 at
6 13 (alterations in Respondent’s brief) (*quoting Tiznado-Reyna v. Kane*, Case No. CV 12-1159-
7 PHX-SRB (SPL), 2012 U.S. Dist. LEXIS 193137, 2012 WL 12882387, at *4 (D. Ariz. Dec. 13,
8 2012) (additional citation omitted)]. Here, Ms. Sun has shown Respondents’ have unlawfully
9 detained her and held her in violation of her rights to due process. *See* Section III above.
10 Accordingly, and to the extent necessary, the Court should find that the balance of equities
11 supports an order directing Respondents to immediately release Ms. Sun and not re-detain her
12 without affording her notice and an opportunity to be heard in accordance with the regulations.²

13 **VI. CONCLUSION**

14 The Court should GRANT Petitioner’s Petition for Writ of Habeas Corpus (ECF Doc. 1),
15 and ORDER Respondents to immediately release Petitioner from custody subject to the
16 conditions of her preexisting OSUP. The Court should ORDER that Respondents may not
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24 ² Respondents admittedly have not identified a third country for Ms. Sun’s removal. [ECF Doc.
25 8-1]. Respondents’ actions against Ms. Sun demonstrate that ICE is unlikely to comply with law
26 regarding adequate notice and an opportunity be heard. *See, e.g., Andriasian v. I.N.S.*, 180 F.3d
27 1033, 1041 (9th Cir. 1999) (“Failing to notify individuals who are subject to deportation that
28 they have the right to apply for asylum in the United States and for withholding of deportation
to the country to which they will be deported violates both INS regulations and the
constitutional right to due process.”). The Court should therefore enjoin Respondents from re-
detaining or removing Ms. Sun until they have first provided her with notice and an opportunity
to be heard by an immigration judge. *Id.* [ECF 2 at 8-14]; .

1 re-detain Petitioner without following the procedures set out in 8 C.F.R. § 241.13(i) and other
2 implementing regulations.

3 November 24, 2025

4 /s/ Jesse M. Bless

5 Jesse M. Bless

6 MA Bar No. 660713

7 Bless Litigation LLC

8 6 Vineyard Lane

9 Georgetown MA 01833

10 781.704.3897

11 jesse@blesslitigation.com

12 Appearing *Pro Hac Vice*

13 /s/ Kristina David

14 Kristina David

15 CA Bar No. 346347

16 David Strashnoy Law, PC

17 1901 Avenue of the Stars, Suite 200

18 Los Angeles, CA 90067

19 818-646-7350

20 kristina@strashnoylaw.com

21 Attorneys for Petitioner