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8 Hao Day THAI

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 Hao Day THAI,

13 Petitioner-Plaintiff,

14 v.

15 Sergio ALBARRAN, Acting Field Office
16 Director of San Francisco Office of Detention
17 and Removal, U.S. Immigrations and Customs
18 Enforcement; U.S. Department of Homeland
Security¹;

19 Todd M. LYONS, Acting Director, Immigration
20 and Customs Enforcement, U.S. Department of
21 Homeland Security;

22 Kristi NOEM, in her Official Capacity,
23 Secretary, U.S. Department of Homeland
Security; and

24 Pam BONDI, in her Official Capacity, Attorney
25 General of the United States;

26 Respondents-Defendants.

Case No. 4:25-cv-6293-JST

**PETITIONER-PLAINTIFF'S
REPLY IN SUPPORT OF
HABEAS PETITION**

27 _____
28 ¹ Respondent-Defendant Sergio Albarran is substituted for Polly Kaiser to reflect the identity of the current Acting Field Office Director of San Francisco Office of Detention and Removal.

1 **I. INTRODUCTION**

2 Petitioner Hao Day Thai (“Mr. Thai”) fears that absent habeas relief, Respondents will
3 arbitrarily re-detain him in violation of his due process rights and Respondents’ own regulations.
4 Mr. Thai’s concerns are a realistic possibility—not speculative nor premature—as demonstrated
5 by widespread documentation that U.S. Immigration and Customs Enforcement (“ICE”) is
6 unlawfully re-arresting individuals on orders of supervision (“OSUP”) like Mr. Thai, in
7 contravention to both the Due Process Clause and ICE’s own regulations, and absent any travel
8 document that would actually facilitate removal. Thus, this Court should issue Mr. Thai the
9 requested habeas relief to prevent the irreparable harm that will result if Mr. Thai is unlawfully
10 and unconstitutionally detained.

11 Moreover, the government continually tries to have it both ways with regard to its ability
12 to remove detainees to third countries—they claim it is not a live case or controversy, but when
13 it does occur, that there is no need to provide notice. Thus, neither Mr. Thai nor this Court can
14 know whether the government will try an end-run around the lack of ability to remove Mr. Thai
15 to Vietnam by trying to remove him without notice or an opportunity to apply for fear-based relief
16 to an undisclosed third country. Such third-country removal without notice is not only practically
17 possible, but is expressly *permitted* under the government’s own current policy. Dkt. 1-1 at Exhs.
18 K, L. Moreover, it is already documented that such third country removals are *not* speculative, as
19 they are actively occurring.² Given the practical and legal impossibility for Mr. Thai to learn
20 ahead of time that he is going to be removed to a third country, the Court should thus order that
21 such removal be enjoined unless and until he is provided with constitutionally-compliant
22 procedures, because there is no existing system to provide him with either adequate notice of such
23 removal, or the opportunity for him to request the legally required protection from torture or death
24 that he might face in such third countries.

25 **II. STATEMENT OF ADDITIONAL RELEVANT FACTS AND PROCEDURAL
26 BACKGROUND**

27 Mr. Thai provides these brief, additional facts to clarify that he is not pursuing a

28 ² See *infra* Section III.B.

1 Temporary Restraining Order (“TRO”), contrary to Respondents’ belief. *See* Dkt. 25,
2 Respondents’ Response to Habeas (“Response”).

3 On July 28, 2025, the parties stipulated that ICE would not detain Mr. Thai at his check-
4 in on July 29, 2025. Dkt. 11.

5 On July 29, 2025, Mr. Thai was indeed not detained at his check-in. Dkt. 17.

6 Accordingly, on July 31, 2025, Mr. Thai filed a Notice of Withdrawal of the Motion for
7 TRO. *Id.* The parties subsequently stipulated to a briefing and hearing schedule to proceed on the
8 instant habeas petition. Dkts. 21, 24.

9 **III. ARGUMENT**

10 **A. Mr. Thai’s Habeas Petition is Appropriate Because his Re-Detention is a**
11 **Reality—Not Speculative—and he Meets the “Constructive Custody”**
12 **Requirement.**

13 In this case, habeas relief preventing Mr. Thai’s re-detention (which necessarily requires
14 revocation of his OSUP) without a pre-deprivation hearing before a neutral adjudicator would
15 serve to ensure his due process rights are protected.

16 **i. Mr. Thai’s unlawful re-detention is a realistic possibility, not**
17 **speculative or premature.**

18 Respondents ignore reality by arguing that Mr. Thai’s detention is speculative and thus his
19 requested habeas relief is “both inappropriate and premature.” Response at p. 1. Legal databases
20 and the general news reports contain widespread documentation regarding the re-detention of
21 individuals from Vietnam like Mr. Thai who have been unlawfully re-arrested despite being under
22 conditional release, including OSUPs, and in contravention to both the Due Process Clause and
23 ICE’s own regulations.

24 Undersigned Counsel’s office alone has several clients who, like Mr. Thai, are pre-1995
25 Vietnamese arrivals who have been re-detained while complying with their ICE check-ins, and
26 absent the issuance of a travel documents. In each of those cases, the courts ordered the clients’
27 release after finding that the government’s re-detention violated due process and the regulations.
28 *See Hoac v. Becerra*, 2:25-cv-01740-DC-JDP, 2025 WL 1993771 (E.D.C.A. July 16, 2025); *Phan*
v. Becerra, 2:25-CV-01757-DC-JDP, 2025 WL 1993735 (E.D.C.A. July 16, 2025); *Hoang v. Cruz*,

1 No. EDCV 25-2766 JGB (JCx), 2025 LX 466860 (C.D. Cal. Oct. 28, 2025);
2 *N.D.N. v. Bondi*, No. 1:25-CV-01587-DAD-CKD, 2025 WL 3251102 (E.D. Cal. Nov. 21, 2025);
3 *see also Lam v. Albarran*, 5:25-cv-09980-NW (Dec. 23, 2025) (granting preliminary injunction to
4 Vietnamese national who entered as a refugee and regularly reports to ICE pursuant to his OSUP,
5 requiring that the government is enjoined and restrained from re-arresting and re-detaining Mr.
6 Lam without a pre-deprivation hearing before a neutral immigration judge”). Additionally, in each
7 of those cases, the government was unable to obtain travel documents from Vietnam. *See id.* Other
8 courts in this jurisdiction and elsewhere have ordered similar relief after finding the same. *Vu v.*
9 *Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341 (E.D. Cal. Nov. 6, 2025); *Vo v.*
10 *Noem*, 3:25-cv-03031-JO-SBC (S.D. Cal. Nov. 19, 2025); *Tran v. Noem*, No. 25-cv-2391BTM-
11 BLM, 2025 WL 3005347 (S.D. Cal. Oct. 27, 2025); *Nguyen v. Scott*, No. 2:25-cv-01398, 2025
12 WL 2419288, (W.D. Wash. Aug. 21, 2025); *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 150 (D. Mass.
13 June 20, 2025). Thus, Mr. Thai’s fears that he will be unlawfully re-detained in violation of his
14 due process and the regulations, and absent a travel document, is a realistic possibility.

15 Furthermore, ICE is currently using minor or unfounded allegations of violations of
16 supervisory conditions as a pretense to revoke conditions and re-arrest individuals. *See El-Ghazaly*
17 *v. Chestnut*, No. 1:25-CV-01621-DC-CKD (HC), 2025 WL 3485030, at *5 (E.D. Cal. Dec. 4,
18 2025); *Bello Chacon v. Hermosillo*, No. 2:25-CV-02299-TMC, 2025 WL 3562666, at *3 (W.D.
19 Wash. Dec. 12, 2025); *Garcia-Aleman v. Thompson*, No. SA-25-CV-886-OLG (HJB), 2025 WL
20 3534806, at *2 (W.D. Tex. Nov. 24, 2025), report and recommendation adopted, No. SA-25-CV-
21 00886-OLG, 2025 WL 3532179 (W.D. Tex. Dec. 9, 2025). Thus, Mr. Thai is at risk of being re-
22 detained at any point—including even while complying with the terms of his OSUP by attending
23 his check-ins.

24 Accordingly, Mr. Thai’s fears are neither speculative nor premature, and his request is
25 therefore not inappropriate. Rather, habeas relief is necessary to protect Mr. Thai’s due process
26 rights.

27 **ii. Habeas relief is appropriate because Mr. Thai meets the “in custody”**
28 **requirement.**

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1 In addition, Mr. Thai's request is appropriate because he remains "in custody" for
2 purposes of 28 U.S.C. § 2241, as he is in constructive custody through his OSUP. Respondents
3 acknowledge that habeas relief does not require an individual to be in actual physical custody,
4 and that the "in custody" requirement may be satisfied where an individual is released from
5 detention subject to specific conditions or restraints. Response at p. 2. Respondents also concede
6 that Mr. Thai was released from detention on an OSUP, and is subject to certain conditions of
7 release. *Id.* However, Respondents allege that despite these restraints imposed by the OSUP on
8 Mr. Thai's liberty, Mr. Thai does not meet the "in custody" requirement because (1) he is not in
9 physical custody and (2) that challenges to future detention are outside habeas jurisdiction. *Id.*

10 Respondents' assertion has been squarely rejected by numerous other courts. That is
11 because when an individual like Mr. Thai is released from custody on an OSUP, the OSUP
12 imposes a number of restrictions on his liberty, including the requirement that he report to ICE
13 whenever instructed. Such stringent requirements, on which his liberty is contingent, "impose[]
14 conditions which significantly confine and restrain his freedom; this is enough to keep him in the
15 'custody' of [the DHS] within the meaning of the habeas corpus statute." *Jones v. Cunningham*,
16 371 U.S. 236, 243 (1963); *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 ("*Rodriguez I*")
17 (holding that comparable supervision requirements constitute "custody" sufficient to support
18 habeas jurisdiction). Accordingly, "habeas relief remains available at least to prevent a further
19 detention without a pre-detention hearing." *Cruz v. Lyons*, No. 5:25-CV-02879-MCS-MBK, 2025
20 WL 3443146, at *3 (C.D. Cal. Dec. 1, 2025).

21 Moreover, courts have granted relief to prevent unlawful re-arrest and erroneous detention
22 for an indefinite period of time in situations like Mr. Thai's, where an individual is on an OSUP
23 and there is no reasonable foreseeability of removal. *Yang v. Kaiser*, No. 25-CV-06323-JD, 2025
24 WL 2792130, at *2 (N.D. Cal. July 30, 2025); *see also Hoac*, 2025 WL 1993771; *Phan*, 2025
25 WL 1993735; *Hoang*, 2025 LX 466860; *Vu*, 2025 WL 3114341; *Vo*, 3:25-cv-03031-JO-SBC
26 (S.D. Cal. Nov. 19, 2025); *Tran*, 2025 WL 3005347; *Nguyen*, 2025 WL 2419288; *Nguyen*, 788
27 F. Supp. 3d 144; *N.D.N.*, 2025 WL 3251102; *Lam*, 5:25-cv-09980.

28 *Thai v. Albarran, et al.*, No. 4:25-cv-6293-JST
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1 Thus, because Mr. Thai is in constructive custody pursuant to his OSUP, he properly seeks
2 habeas relief to prevent his unlawful re-arrest and erroneous detention.

3 **B. This Court has Jurisdiction Over Mr. Thai’s Third Country Removal Claim.**

4 At the outset, this Court has jurisdiction over Mr. Thai’s third country removal claim
5 because, as the Ninth Circuit has held, Respondents cannot be insulated from judicial review over
6 “any post-hearing decision by ICE to remove noncitizens to third countries where they would be
7 in danger of persecution, torture, and even death.” *Ibarra-Perez v. United States*, 154 F.4th 989,
8 997 (9th Cir. 2025) (finding that jurisdiction is not foreclosed by 8 U.S.C. § 1252(g)). To be clear,
9 Mr. Thai does not seek an order enjoining his removal outright: he only seeks an order that he be
10 provided with constitutionally-compliant procedures prior to any such third country removal.

11 Respondents also err in contending that Mr. Thai’s claim that he should be provided with
12 constitutionally adequate procedures prior to third country removal does not pose a controversy
13 for the Court to resolve because “Respondents have not indicated that they seek to remove
14 Petitioner to a third country.” Response at p. 4. Despite ICE’s *current* indication that it has not
15 made a determination yet to seek to remove him to a third country, Respondent U.S. Department
16 of Homeland Security (“DHS”) does currently have in place a policy regarding third country
17 removals, and that policy includes removing individuals *without notice*. Mr. Thai has already
18 provided this Court with a copy of this policy, along with an internal ICE memorandum, dated
19 July 9, 2025, which further confirms that officers are instructed to follow the March 30, 2025,
20 memorandum. Dkt. 1-1, at Exhs. K, L. Individuals with removal orders have found themselves
21 unlawfully deported by ICE to third countries, not previously identified to them as the country of
22 removal, such as El Salvador, Panama South Sudan, or Eswatini—a reality that is surely not
23 speculative.³ Some individuals who have been sent to third countries have already faced torture

24 ³ NPR, “U.S. deports hundreds of Venezuelans to El Salvador, despite court order” (Mar. 16,
25 2025), available at: [https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-](https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump)
26 [trump](https://www.npr.org/2025/03/16/g-s1-54154/alien-enemies-el-salvador-trump); AP, “Panama releases dozens of detained deportees from US into limbo following human
27 rights criticism” (Mar. 9, 2025), available at: [https://apnews.com/article/trump-deportations-](https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5)
28 [migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5](https://apnews.com/article/trump-deportations-migrants-panama-costa-rica-darien-rights-afghanistan-70f79684ac9e0701bc34e3e7144944c5);
The New York Times, “Trump Administration Poised to Ramp Up Deportations to Distant

1 and, for others, their attorneys have been unable to confirm that they are alive.⁴ Even if
 2 Respondents have not indicated that they seek to specifically remove Mr. Thai to a third country
 3 at this time, that they are actively following their policy of third country removal is explicit and
 4 real. Should ICE decide to apply its current policy to Mr. Thai, he could be removed to a third
 5 country with no notice or opportunity to seek relief. Thus, Mr. Thai's fear of being removed to a
 6 third country without due process is a real and immediate threat of future injury jeopardizing his
 7 life and safety and depriving him of any constitutional rights.⁵

8 In addition, the third-country removal policy is not limited to situations where removal to
 9 the country in the removal order is not possible, as illustrated, for example, by the reports that a
 10 citizen of Mexico was sent to South Sudan.⁶ Respondents are engaged in a policy of effectuating
 11 removal however they determine they want to do so, and are proudly broadcasting to the world

12 Countries" (July 13, 2025), available at: [https://www.nytimes.com/2025/07/13/us/politics/south-](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html)
 13 [sudan-third-country-deportations.html](https://www.nytimes.com/2025/07/13/us/politics/south-sudan-third-country-deportations.html); Politico, "Trump launches next round of third country
 14 deportations with new flight to Eswatini" (July 16, 2025), available at:
 15 <https://www.politico.com/news/2025/07/16/trump-third-country-deportations-eswatini-00455757>
 16 ("The Trump administration deported five migrants from Vietnam, Jamaica, Laos, Cuba and
 17 Yemen to the small Southern African nation of Eswatini..."); Associated Press, "Men deported
 18 by US to Eswatini in Africa will be held in solitary confinement for undetermined time" (July 18,
 19 2025), available at: [https://apnews.com/article/eswatini-united-states-trump-deportation-](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbfe6caff87d0bb8)
 20 [immigrants-a5853b16b7b275cbbfe6caff87d0bb8](https://apnews.com/article/eswatini-united-states-trump-deportation-immigrants-a5853b16b7b275cbbfe6caff87d0bb8); The Intercept, "State Dept: Trump's 'Third
 21 Countries' for Immigrants Have Awful Human Rights Records" (July 29, 2025), available at:
 22 [https://theintercept.com/2025/07/29/trump-deport-immigrants-third-country-human-rights/.](https://theintercept.com/2025/07/29/trump-deport-immigrants-third-country-human-rights/)

23 ⁴ The Guardian, "Venezuelans deported by Trump are victims of 'torture', lawyers allege" (May
 24 16, 2025), available at: [https://www.theguardian.com/us-news/2025/may/16/venezuelans-](https://www.theguardian.com/us-news/2025/may/16/venezuelans-deported-trump-lawyers-torture)
 25 [deported-trump-lawyers-torture](https://www.theguardian.com/us-news/2025/may/16/venezuelans-deported-trump-lawyers-torture) ("Lawyers hired by Venezuela have been unable to confirm 'proof
 26 of life' for 252 migrants imprisoned in El Salvador."); NPR, "Abrego Garcia says he was severely
 27 beaten in Salvadoran prison" (July 3, 2025), available at: [https://www.npr.org/2025/07/03/g-s1-](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture)
 28 [75775/abrego-garcia-el-salvador-prison-beaten-torture.](https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture)

⁵ It gets worse. Human Rights experts from the United Nations have already expressed that the
 government's own explicit policy is not compliant with the United States's obligations under
 international law. See United Nations, "UN experts alarmed by resumption of US deportations to
 third countries, warn authorities to assess risks of torture" (July 8, 2025), available at:
[https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-](https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn)
[deportations-third-countries-warn.](https://www.ohchr.org/en/press-releases/2025/07/un-experts-alarmed-resumption-us-deportations-third-countries-warn)

⁶ The Guardian, "US border czar says he doesn't know fate of eight men deported to South
 Sudan" (July 11, 2025), available at: [https://www.theguardian.com/us-news/2025/jul/11/trump-](https://www.theguardian.com/us-news/2025/jul/11/trump-immigration-tom-homan-south-sudan-deportees)
[immigration-tom-homan-south-sudan-deportees.](https://www.theguardian.com/us-news/2025/jul/11/trump-immigration-tom-homan-south-sudan-deportees)

1 their ability to do so. DHS itself has publicly announced that it has the “undisputed authority to
2 deport criminal illegal aliens—who are not wanted in their home country—to third countries that
3 have agreed to accept them.”⁷ Such third country removal could be arranged by Respondents at
4 any time, with no notice required—so the lack of a plan today indicates nothing about the
5 possibility for an active removal tomorrow.

6 Further, courts have already determined that due process challenges to the third-country
7 removal policy are likely to succeed on the merits because the third country removal policy exists
8 and is being executed, resulting in the actual deportation of noncitizens to third countries with
9 little or no notice in violation of the Due Process Clause. *Vu*, 2025 WL 3114341, at *9 (E.D. Cal.
10 Nov. 6, 2025). That is because the policy is carried out absent proper notice, through last-minute
11 orders of removal, and through the failure to notify individuals of their due process rights and
12 rights under the Convention Against Torture. *Id.*; see e.g., *Nguyen v. Scott*, 2025 WL 2419288, at
13 *18-23; *Zakzouk v. Becerra*, No. 25-CV-06254-KAW, 2025 WL 2899220, at *4 (N.D. Cal. Oct.
14 10, 2025); *Baltodano v. Bondi*, No. C25-1958RSL, 2025 WL 2987766, at *2-3 (W.D. Wash. Oct.
15 23, 2025). Accordingly, the existence of the policy and the unconstitutional manner in which it is
16 carried out support that Mr. Thai’s claim poses a real and immediate threatened injury, and the
17 Court therefore has jurisdiction over his claim.

18 Finally, to vitiate a third-country removal claim, it is not sufficient for Respondents to
19 merely note that there is no current plan to remove Mr. Thai to a third country. *Vu*, 2025 WL
20 3114341, at *8 (where ICE has offered “no argument in response” to the petitioner’s third-country
21 argument and ICE “do[es] not state whether they are attempting or will attempt to remove
22 petitioner to a country other than Vietnam . . . [t]hat silence is telling.”). Here, Respondents offer
23

24 ⁷ DHS, “DHS Releases Statement on Major Victory for Trump Administration and the American
25 People on Deporting Criminal Illegal Aliens to Third Countries” (June 23, 2025), available at:
26 [https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-](https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people)
27 [administration-and-american-people](https://www.dhs.gov/news/2025/06/23/dhs-releases-statement-major-victory-trump-administration-and-american-people); CBS News, “Supreme Court lets Trump administration
28 resume deportations to third countries without notice for now” (June 24, 2025), available at:
[https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/)
[tothird-countries-without-notice/](https://www.cbsnews.com/news/supreme-court-lifts-lower-court-order-blocking-deportations-to-third-countries-without-notice/).

1 no indication that they will *not* remove Mr. Thai to a third country. *See* Response at p. 4. They
2 merely argue that they have not indicated they will seek third-country removal. *Id.* This silence
3 is insufficient to guarantee the absence of a threat of injury, particularly as the policy is conducted
4 absent notice and due process. If Respondents have no intention of deciding to removal Mr. Thai
5 to a third country in the future, then an order from this Court enjoining such action would cause
6 no prejudice to Respondents as it would only maintain the same status quo that they claim exists.

7 For all the above reasons, Mr. Thai’s fear of being summarily removed to a third
8 country—without first being provided with notice or any constitutionally-compliant procedures—
9 is a real and immediate threatened injury, grounded in the reality that many other individuals are
10 already experiencing, and is unconstitutional. Therefore, intervention by this Court is both proper
11 and necessary to protect Mr. Thai’s due process rights.

12 **IV. CONCLUSION**

13 For all the aforementioned reasons, the Court should grant Mr. Thai’s habeas relief.

14
15 Dated: January 8, 2026

Respectfully submitted,

16 /s/ Christine Raymond

17 Christine Raymond
18 Zachary Nightingale
19 Attorneys for Petitioner
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