

1 Johnny Sinodis (Arizona Bar# 029058)
2 Zachary Nightingale (California Bar # 184501)*
3 Lorena C. Castillo (California Bar # 349604)*
4 Van Der Hout LLP
5 360 Post St., Suite 800
6 San Francisco, CA 94108
7 Telephone: (415) 981-3000
8 Facsimile: (415) 981-3003
9 ndca@vblaw.com

10 *Attorneys for Petitioner-Plaintiff*
11 Viengkhone SIKEO

12 *admitted pro hac vice

13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 Viengkhone SIKEO,

16 Petitioner-Plaintiff,

17 v.

18 John E. Cantu, Field Office Director,
19 U.S. Immigration and Customs Enforcement,
20 U.S. Department of Homeland Security;
21 Kristi Noem, Secretary of U.S. Department of
22 Homeland Security; and Pam Bondi,
23 Attorney General of the United States,
24 Warden, Florence Detention Center; in their
25 official capacities;

26 Respondents-Respondents.

27 Case 2:25-cv-03191-SHD (CDB)

28 **PETITIONER'S REPLY TO
RESPONDENTS'
SUPPLEMENTAL BRIEF
REGARDING RE-DETENTION**

1 **I. INTRODUCTION**

2 Petitioner-Plaintiff, Mr. Viengkhone Sikeo (“Petitioner” or “Mr. Sikeo”), through
 3 undersigned Counsel, respectfully submits this Reply to Respondents’ Supplemental Brief
 4 Regarding Re-Detention. (Dkt. 19). The arguments advanced herein should be read in conjunction
 5 with the arguments previously set forth by Mr. Sikeo in his motion for a temporary restraining
 6 order and preliminary injunction. (Dkt. 4).

7 **II. UPDATED FACTUAL INFORMATION**

8 On September 17, 2025, The Eloy Executive Office for Immigration Review confirmed
 9 that the Immigration Judge who is currently adjudicating Mr. Sikeo’s pending Motion to Reopen
 10 Based on Fundamental Changes in the Law has granted his Motion for Stay of Removal. Castillo
 11 Decl. ¶ 2. His removal order is based on a conviction that no longer renders him deportable under
 12 Supreme Court precedent. *Id.* The grant of that stay of removal means that his removal has been
 13 stayed for the duration of the pendency of the motion to reopen, which is in an indefinite period
 14 of time.

15 **III. ARGUMENT**

16 **A. RESPONDENTS’ REVOCATION OF MR. SIKEO’S ORDER OF
 17 SUPERVISION WAS UNLAWFUL BECAUSE IT VIOLATED THE
 18 REGULATIONS AND WAS PREDICATED ON INCORRECT
 19 INFORMATION**

20 Mr. Sikeo’s Order of Supervision (“OSUP”) was unlawfully revoked by U.S. Immigration
 21 and Customs Enforcement (ICE) on June 25, 2025, because, even when ICE was required to
 22 provide an explanation, the reasons provided were not based on fact, and beyond that, ICE did
 23 not provide Mr. Sikeo with *full* reasons for his re-detention or the rights he had relating to it. ICE
 24 further violated the regulations as it never provided him with an informal interview. Moreover,
 25 the evidence supplied by ICE demonstrates this error, and the inconsistencies regarding the proof
 26 of service calls into question what was actually served on Mr. Sikeo.

27 As Respondents stated, among the reasons ICE can revoke release is when it is
 28 “appropriate to enforce a removal order or to commence removal proceedings against the

[noncitizen].” 8 C.F.R. § 241.4(l)(2)(iii). Upon revocation, the noncitizen “will be notified of the reasons for revocation of his or her release.” 8 C.F.R. § 241.13(i)(3). “The noncitizen will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* This regulation, which is mandatory (“will”, not “may”) and not optional, was not followed here.¹

First, ICE was not consistent in providing the alleged reasons as to why it revoked Mr. Sikeo’s OSUP. Mr. Sikeo states that, after being placed in handcuffs, the officers told him that he was to be detained because by “order of the Trump Administration, the laws had changed.” Exh. A, Declaration of Mr. Sikeo. This is a common refrain by many noncitizens who are being arrested without justification these days. *See, e.g., Zakzouk v. Becerra*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (N.D. Cal. July 26, 2025) 2 (“Although Petitioner-Plaintiff informed the ICE officer that she has no right to return to either country because she is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”). ICE’s new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in Mr. Sikeo’s circumstances or increase the government’s interest in detaining him.²

Even by the terms of the paperwork provided, the reasons for revocation are inconsistent. The Notification of Release (“NRR”) states that “ICE has determined that [Mr. Sikeo] *can* be

¹ As the Supreme Court has explained, such language “generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive,” *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (quoting *Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019) (“Shall” means “[h]as a duty to; more broadly, is required to This is the mandatory sense that drafters typically intend and that courts typically uphold.”); *United States v. Monsanto*, 491 U.S. 600, 607 (1989) (finding that “shall” language in a statute was unambiguously mandatory).

² *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” Washington Post (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 expeditiously removed from the United States pursuant to the outstanding order of removal
2 against you. On July 12, 2005, [Mr. Sikeo was] ordered removed to Laos by an Immigration Judge
3 and [he is] subject to a final order of removal." Dkt. 19-1, Page 6. By law, a removal order means
4 a noncitizen can be removed. It is factually correct that Mr. Sikeo was ordered removed on July
5 12, 2005. The above sentences on the NRR, which are the sentences Mr. Sikeo recognizes, are
6 arguably more statements of fact rather than reasons for revocation, because there was no
7 evidence of anything new. To be clear, this same state of affairs had existed in the 2005 removal
8 order. The phrase "there are changed circumstances in your case," in the preceding paragraph
9 does not contradict this, as this statement is too vague to fall under the procedure for revocation
10 of release.

12 Second, when ICE detained Mr. Sikeo, it did not inform him of full reasons for his re-
13 detention and the rights he had relating to it. Mr. Sikeo states that the officers read him a document
14 that is likely the NRR (Dkt. 19-1, Page 6) up until before the sentence "[y]our case is pending
15 review for the issuance of a travel document from a third country." *Id.* Although it is written on
16 the form that Respondents have now produced, Mr. Sikeo confirms that he never heard this
17 sentence, and had he heard it, he would have "never signed the [NRR]," and would have instead
18 "asked for an attorney." *Id.* Respondents argue that they revoked Mr. Sikeo's release because his
19 removal had become significantly likely to occur. However, the sentence that mentions the third
20 country comes after the sentence confirming that he was ordered removed to Laos. *Id.* ("On July
21 12, 2005, you were ordered removed to Laos by an Immigration Judge and you are subject to a
22 final order of removal). This suggests that, at the time of his detention, a supposed travel document
23 that the Respondents expected to obtain was *not* from Laos, which means the "significantly likely
24 to occur" has nothing to do with his removal order (to Laos). This instead would have required
25
26
27
28

1 different procedures outlined in Mr. Sikeo's original habeas petition; they are not proper reasons
2 for revocation of an OSUP.

3 It gets worse. Not only did the ICE officers not inform Mr. Sikeo of what they had written
4 in their claimed justification for detaining him – that they expected to be able to remove him to a
5 third country other than Laos – but they also did not follow that up with any review, as required.
6 8 C.F.R. § 241.13(i)(3). ICE did not properly provide Mr. Sikeo with *information* regarding an
7 informal interview. Mr. Sikeo, now informed of what Respondent's claim they told him, states he
8 was never informed of an informal interview or the opportunity to respond to his new detention,
9 and he was never informed which country the officers were going to attempt to get travel
10 documents to. Exh. A, Declaration of Mr. Sikeo. In fact, Mr. Sikeo was not aware that ICE was
11 in the process of procuring a travel document until he got to Golden State Annex, but no officer
12 asked him for information about any living relatives in Laos. *Id.* He was not aware that ICE had
13 already procured a travel document until his attorney notified him during a virtual appointment
14 earlier in September 2025. *Id.* This is important to him, because he believed that Laos would not
15 accept for removal, and he did not have any idea that a third country might be considered.
16
17

18 Third, Mr. Sikeo was never provided with a proper informal interview. 8 C.F.R.
19 § 241.13(i)(3). Mr. Sikeo confirms that the officers did not ask him if he (1) had any questions,
20 (2) had anything to say, (3) wanted to write anything down, or (4) had any evidence to submit.
21 Exh. A, Declaration of Mr. Sikeo. In fact, after signing the document, the officers put Mr. Sikeo's
22 hands in handcuffs. *Id.* Furthermore, Mr. Sikeo was *per se* never provided with a proper informal
23 interview when he was not notified that ICE was attempting to obtain a travel document from a
24 third country. But for the omission, Mr. Sikeo would not have signed, and very likely would have
25 contested the detention, because he has a fear of being sent to a third country (and did not think
26
27
28

1 he could be accepted by Laos). Because he had never had a travel document to Laos issued, he
2 believed that if this was the only reason for his detention, his confinement would be short because
3 in the past he had always been released. *Id.*

4 Fourth, the NRR's proof of service calls into question what exactly was served on him in
5 the first place. Here, Dkt 19-1 Page 7, which immediately follows the NRR, is titled "Notice to
6 Alien of File Custody Review." It also states that the officer certifies that they served Mr. Sikeo
7 "with a copy of this document." *Id.* It is thus unclear which documents were actually served on
8 Mr. Sikeo. Was it the NRR or the Notice to Alien of File Custody Review? The documents are
9 inconclusive, and there is therefore no evidence establishing the regulations were followed by
10 ICE. Mr. Sikeo recalls hearing some of the contents of the NRR read to him, but he does not
11 recognize most of the information contained in document, especially the material sections (1)
12 indicating an intention to remove him to a third country and (2) advising him as to his right to an
13 informal interview. If Mr. Sikeo was never served the NRR, that could possibly help explain why
14 he was unaware of the travel document and informal interview requirement.
15

16 In sum, Mr. Sikeo believes that ICE did not follow the regulations because (1) he was not
17 informed as to the actual reasons for his detention – the paperwork says it is because he was going
18 to be removed to a third country even though no such travel document had been obtained, and
19 ICE did not explain that to him; (2) it appears that ICE did not properly serve him with the
20 paperwork it claims to have prepared; and (3) no custody review occurred at which he was able
21 to respond, because if he has been notified of the intention to remove him to a third country he
22 would have objected.
23

24 Finally, given that the regulations that indicate the procedures on how to properly revoke
25 a noncitizen's OSUP are meant to protect noncitizens' rights, this violation is *per se* prejudicial
26

1 to Mr. Sikeo. *U.S. v. Raya-Vaca*, 771 F.3d 1195, 1205 (9th Cir. 2014) (overruled on other
2 grounds) (citations omitted). As the Ninth Circuit has noted, there are two types of regulations:
3 (1) those that protect fundamental due process rights, and (2) those that do not. The Court found
4 that “a violation of the first type of regulation, however, implicates due process concerns even
5 without a prejudice injury.” *Id.*; see also *United States v. Caceres*, 440 U.S. 741, 752–53, 99 S.
6 Ct. 1465, 59 L.Ed.2d 733 (1979); *United States v. Calderon-Medina*, 591 F.2d 529, 531 (9th Cir.
7 1979); *Montes-Lopez v. Holder*, 694 F.3d 1085, 1093 (9th Cir. 2012). The regulations here are
8 meant to provide Mr. Sikeo with a way to understand and challenge his re-detention. ICE’s
9 violation of the regulatory requirements meant to protect his rights accordingly amounts to a *per*
10 *se* violation without the need to demonstrate further prejudice. Mr. Sikeo’s confinement must
11 therefore be found invalid, and he must be released.
12

14 **B. MR. SIKEO SHOULD BE ORDERED RELEASED BECAUSE HE IS
15 NEITHER A FLIGHT RISK NOR A DANGER.**

16 “Freedom from imprisonment—from government custody, detention, or other forms of
17 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
18 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). ICE’s authority to detain an individual beyond the
19 removal period under such circumstances is not boundless. Rather, it is constrained by the
20 constitutional requirement that detention “bear a reasonable relationship to the purpose for which
21 the individual [was] committed.” *Id.* at 690. Because the principal purpose of the post-final-order
22 detention statute is to effectuate removal, detention bears no reasonable relation to its purpose if
23 removal cannot be effectuated. *Id.* at 697.

26 Due Process does not permit the government to strip Mr. Sikeo of his liberty without
27 determining first if he is a flight risk or danger to the community. Mr. Sikeo must therefore not
28 be re-detained unless and until ICE proves to a neutral arbiter that (1) his detention is necessary

1 because there has been a material change in circumstances establishing that he is a flight risk or
 2 a danger to the community and (2) that his removal is reasonably foreseeable. Numerous federal
 3 district courts in the Northern, Eastern, and Central Districts of California have already ordered
 4 similar relief. *See, e.g., J.P. v. Santacruz*, 8:25-cv-01640-FWS-JC, Dkt. 10 (C.D. Cal. July 28,
 5 2025); *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB- JC, Dkt. 14 (C.D. Cal. Aug. 14,
 6 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-
 7 DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
 8 *7; *Guillermo M. R. v. Kaiser*, --- F.Supp.3d ----, 2025 WL 1983677, at *10 (N.D. Cal. July 17,
 9 2025); *Pinchi v. Noem*, --- F.Supp.3d ----, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025);
 10 *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025);
 11 *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v.*
 12 *Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3, 2025).

15 Here, since Mr. Sikeo's removal has been stayed for an indefinite period of time, his
 16 removal is no longer reasonably foreseeable. Furthermore, Mr. Sikeo is neither a flight risk nor a
 17 danger to the community. Since 2005, Mr. Sikeo has been attending his yearly check-ins. Dkt. 3-
 18 2, Declaration of Zachary Nightingale. He has not violated the terms of his probation. *Id.* He has
 19 exercised his right to liberty, continues to lawfully reside and work in the United States, and he
 20 plays an integral role in the life of his US citizen partner, parent, and children. *Id.* Therefore, Mr.
 21 Sikeo should be released because his detention serves no reasonable relation to his removal order.
 22

23 **C. RESPONDENTS INCORRECTLY RELY ON 8 U.S.C. § 1252(G), 8 U.S.C.
 24 § 1252(B)(9), AND 8 U.S.C. § 1252(A)(5) BECAUSE MR. SIKEO'S RE-
 25 DETENTION IS UNLAWFUL WHICH THIS COURT CAN REVIEW**

26 Because Mr. Sikeo's OSUP was not lawfully revoked, his re-detention is reviewable in
 27 this Court. Neither 8 U.S.C. § 1252(a)(5) nor § 1252(b)(9) bar review because Mr. Sikeo's re-
 28

1 detention based on an unlawfully executed OSUP revocation has nothing to do with his removal
2 order nor the facts surrounding his removal order. *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th
3 Cir. 2012) (§ 1252(a)(5) only bars challenges to “an order of removal.” It “does not eliminate the
4 ability of a court to review claims that are ‘independent of challenges to removal orders.’”).

5 Similarly, § 1252(g) does not bar review because Mr. Sikeo is challenging his re-detention
6 as unconstitutional because of the unlawfully revoked OSUP. *See, e.g., Garcia v. Andrews*, No.
7 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, *1 n.1 (E.D. Cal. Jul. 14, 2025) (“Petitioner’s
8 claim is not a challenge to a removal order but rather, that his re-detention is unconstitutional. As
9 such, § 1252(g) is inapplicable[.]”); *Nak Kim Cheuen v. Marin*, No. 17-cv-01898-CJC-GJS, 2018
10 WL 1941756, at *4 (C.D. Cal. Mar. 26, 2018) (same). In fact, Mr. Sikeo’s challenge to the
11 revocation of his OSUP is not at all related to the execution of his final removal order because he
12 is challenging his detention status, which is separate. *see Jennings v. Rodriguez (Rodriguez IV)*,
13 583 U.S. 281, 294 (2018) (“We did not interpret [§ 1252(g)] to sweep in any claim that can
14 technically be said to ‘arise from’” commencement of proceedings, adjudication of cases, or
15 execution of removal orders); *see also Nielsen v. Preap*, 586 U.S. 392, 402 (2019).

16 On the issue of the stay of removal, Mr. Sikeo was initially given incomplete information
17 and thus was not able to confirm whether the order of removal was to the same country that he
18 was going to be removed to – a confusion enhanced by the fact that he understood that he was
19 effectively stateless because no country would consider him a citizen. Thus, he was challenging
20 the location of his removal. Since then, he has also sought a stay of removal from the Immigration
21 Court on account of the invalidity of his removal order on legal grounds. Currently, the
22 Immigration Judge stayed his removal indefinitely. However, Mr. Sikeo remains concerned about
23 being removed to a third country, a concern highlighted by the Respondents’ submitted evidence
24

1 that it did plan to seek travel authorization to a third country when he was detained. As previously
2 noted, the court has jurisdiction to prevent that. *Ibarra-Perez v. United States*, No. 24-631, 2025
3 WL 2461663, at *9 (9th Cir. Aug. 27, 2025).

4 Because the Court undoubtedly has jurisdiction to adjudicate Mr. Sikeo's claims, it should
5 do so, and it should further order him immediately released.
6

7 **IV. CONCLUSION**

8 For all the foregoing reasons, Mr. Sikeo respectfully requests that the Court convert his
9 TRO into a PI and order that he be released from detention.
10

11 Dated: September 19, 2025

Respectfully submitted,

12 /s/ Lorena Castillo
13 Lorena Castillo
14 Zachary Nightingale
15 Johnny Sinodis
16 Attorneys for Mr. Sikeo
17
18
19
20
21
22
23
24
25
26
27
28