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11 Counsel for Petitioner

12 UNITED STATES DISTRICT COURT FOR THE
13 CENTRAL DISTRICT OF CALIFORNIA

14 MILTON OBED CASTILLO-
15 HERNANDEZ



16 Petitioner,
17 v.

18 PAMELA BONDI, in her official capacity as
19 Attorney General,

20 KRISTI NOEM, in her official capacity as
21 Secretary of the Department of Homeland
22 Security,

23 U.S. DEPARTMENT OF HOMELAND
24 SECURITY,

25 F. SEMAIA, in his official capacity as Warden of
26 Adelanto Detention Facility,

27 ERNESTO SANTACRUZ, JR., in his official
28 capacity as Acting ICE Field Office Director,
Respondents.

Case No. 5:25-cv-02662

PETITIONER'S REPLY TO
RESPONDENTS'
OPPOSITION TO MOTION
FOR A TEMPORARY
RESTRAINING ORDER

1 **I. INTRODUCTION**

2 Petitioner filed a motion for a temporary restraining order (“TRO”) pursuant to
3 Fed. R. Civ. P. 65(d). Petitioner sought an order to preserve the status quo prior to
4 his unlawful re-detention – namely, his release on an order of supervision
5 (“OSUP”). Respondents opposed the motion, arguing that Respondents have
6 unfettered discretion to revoke his OSUP, and that even if the OSUP was
7 improperly revoked, ordering Petitioner’s release is not an appropriate remedy. But
8 courts across the country have recognized that when ICE re-detains a non-citizen
9 without notice or opportunity to be heard, on the decision of an individual without
10 authority to do so, without findings required by law, and in violation of agency
11 rules, it violates the non-citizen’s constitutional rights and that immediate release is
12 the appropriate remedy. *Cesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D.N.Y.
13 May 2, 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 386, 386-89 (D. Mass.
14 2017)); *see also, e.g., Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025);
15 *M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas
16 petitioner where revocation of an ICE order of supervision was ordered by someone
17 without regulatory authority to do so); *Grigorian v. Bondi*, 2025 WL 2604573 at *9
18 (S.D. Fl. 2025) (ordering release of habeas petitioner and explaining “the
19 opportunity to contest detention through an informal interview is not some ticky-
20 tacky procedural requirement; it strikes at the heart of what due process
21 demands.”). Petitioner urges this Court to do the same.
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1 **II. ARGUMENT**

2 Respondent argues that Petitioner fails to show the government lacked authority
3 to detain him. Resp. Opp. at 2. But Petitioner never claimed that Respondents lack
4 any authority to detain him. Instead, Petitioner's claim is that Respondents
5 exercised their authority to release him and place him under an order of supervision
6 in 2024. In such situations the regulations, and more importantly, the Due Process
7 Clause of the Fifth Amendment to the United States Constitution, mandate a
8 process which must occur prior to Petitioner's re-detention. *Grigorian v. Bondi*,
9 2025 WL 2604573 at *9 (S.D. Fl. 2025) (ordering release of habeas petitioner and
10 explaining "the opportunity to contest detention through an informal interview is
11 not some ticky-tacky procedural requirement; it strikes at the heart of what due
12 process demands.").

13 Respondent next focuses on the fact that Petitioner's removal is allegedly
14 foreseeable, emphasizing that "he is expected to be removed as expeditiously as
15 possible as part of a detained removal proceeding." Resp. Opp. at 3. It should be
16 noted that Petitioner is now in what are termed "withholding only proceedings."
17 Petitioner will have hearings before an immigration judge who will decide whether
18 it is more likely than not that he will be persecuted on account of a protected
19 ground. While Respondent correctly notes that Petitioner has a hearing scheduled
20 for October 14, 2025, this is a hearing to submit the required I-589 application for
21 relief. Next, a final hearing date will be scheduled at some point in the future for an
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1 immigration judge to take testimony and consider the merits of Petitioner's claim.
2 Should withholding of removal be granted, Petitioner may not be removed to his
3 native Guatemala. *See* 8 U.S.C. § 1231(b)(3).

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5 But more importantly, Respondent's arguments miss the mark. Petitioner's
6 claim does not center on an argument that he is experiencing prolonged detention
7 where his removal is not foreseeable. Instead, his claim centers on the fact that
8 Respondents violated his due process rights by revoking his order of supervision
9 without the process required by both the Constitution and the agency's own
10 regulations.
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13 Respondents next argue that "the government is allowed to revoke [an order
14 of supervision] for nearly any reason." Resp. Opp. at 4. But this overlooks the fact
15 that the regulations provide specific reasons for revocation, and critically, a process
16 that must be followed for such revocation. This process includes limitations on who
17 may revoke an order of supervision, provisions for notice regarding the reasons for
18 revocation, and the opportunity for the non-citizen to respond. 8 C.F.R. §
19 241.4(l)(2); *see also* 8 C.F.R. § 241.13(i). Respondents provide a declaration from a
20 deportation officer who reviewed Petitioner's alien file and summarizes Petitioner's
21 prior removals, last entry to the United States, and release on recognizance and
22 subsequent placement under OSUP. But tellingly, this declaration does not state
23 that any notice of revocation or opportunity to respond was provided to Petitioner
24 either prior to, concurrent with, or after his re-detention on June 4, 2025. *See* Dkt.
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1 No. 4-2. Thus, Petitioner's assertion that ICE failed to comply with the
2 requirements of the regulations remains unrebutted.
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4 The revocation of Petitioner's OSUP was unlawful, contrary to the agency's
5 constitutional power, and not in accordance with the INA and implementing
6 regulation. As noted by the Supreme Court, "if men must turn square corners when
7 they deal with the government, it cannot be too much to expect the government to
8 turn square corners when it deals with them." *Niz-Chavez v. Garland*, 593 U.S.
9 155, 172 (2021).
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11 Respondents cite to *Moran v. U.S. Dep't of Homeland Security*, 2020 WL
12 6083445 at *9 (C.D. Cal. Aug. 21, 2020) and argue that there is no authority
13 holding that Petitioner has a protected interest in remaining at liberty. Resp. Opp. at
14 4. It is exceedingly difficult to square this non-precedential decision with the
15 overwhelming caselaw holding that all persons in the United States are protected by
16 the due process clause of the Fifth Amendment and that "[f]reedom from
17 imprisonment—from government custody, detention, or other forms of physical
18 restraint—lies at the heart of the liberty that [the Due Process] Clause protects."
19 *Zadvydas*, 533 U.S. at 690.
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21 Contrary to Respondents' contentions, Petitioner does not rely primarily on
22 decisions involving ICE's revocation of supervised release that had previously been
23 granted by an Immigration Court during immigration proceedings, as opposed to
24 those released directly by ICE. Resp. Opp. at 5. Indeed, many of the cases cited by
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1 Petitioner involve individuals released by ICE, and not upon bond order of an
2 Immigration Court (or federal court), who then challenged their unlawful re-
3 detention: *See, Hernandez v. Wofford*, 2025 WL 2420390, *6 (E.D. Ca. Aug. 21,
4 2025) (non-citizen who was released by ICE after an initial detention at the time of
5 his entry has a protected liberty interest against being re-detained); *Pinchi v. Noem*,
6 2025 WL 1853763, *3-4 (N.D. Ca. July 4, 2025) (non-citizen was detained upon
7 her entry to the US and then released by DHS on her own recognizance after it was
8 determined that she was not a flight risk); *Singh v. Andrews*, 2025 WL 1918679, *1
9 (E.D. Ca. July 11, 2025) (Singh was out of custody for over 17 months after DHS
10 determined that he did not pose a danger to the community and was not a flight
11 risk); *Martinez v. Hyde*, 2025 WL 2084238 at *1 (D. Mass. July 24, 2025) (non-
12 citizen released on own recognizance by CBP); *Mata Valesquez v. Kurzdorfer*,
13 2025 WL 1953796 at *18 (W.D. N.Y. July 16, 2025) (non-citizen was paroled by
14 DHS and then challenged re-detention); *Ramirez Clavijo v. Kaiser*, 2025 WL
15 2419263, *9 (N.D. Cal. August 21, 2025) (non-citizen was detained by DHS after
16 entering the US without inspection, and then released on own recognizance).

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23 Whether a non-citizen is detained during a removal order period, or prior to
24 issuance of removal order; whether the non-citizen was released by order of a
25 judge, or by a decision of the DHS - the fact remains “that aliens facing deportation
26 from this country are entitled to due process rights.” *Walters v. Reno*, 145 F.3d
27 1032, 1037 (9th Cir. 1998). And the Due Process Clause generally “requires some
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1 kind of a hearing before the State deprives a person of liberty or property.”
2 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). A “non-citizen’s “private interest in
3 remaining out of immigration custody is substantial.” *Sun v. Santacruz*, 2025 WL
4 2730235, *5 (C.D. Cal. Aug. 26, 2025), citing *Nak Kim Chhoeun v. Marin*, 442 F.
5 Supp. 3d 1233, 1245 (C.D. Cal. 2020) (holding that noncitizens released from
6 immigration custody on general orders of supervision have a liberty interest in their
7 freedom); *Ortega v. Kaiser*, 2025 WL 2243616, at *5 (N.D. Cal. Aug. 6, 2025)
8 (similar); *Pinchi v. Noem*, 2025 WL 2084921, at *3 (N.D. Cal. July 24,
9 2025) (collecting cases).

13 Finally, Respondent contends that the remedy in this case should not be
14 immediate release, but “rather to remedy the specific procedural deficiency that
15 might be established.” Resp. Opp. at 6. Respondent does not further elaborate on
16 what this lesser remedy should be. Petitioner contends that the proper remedy for
17 the violations that have occurred in his case is to restore the status quo ante and
18 order his immediate release from custody and the provision of a pre-deprivation
19 custody hearing before any attempt by Respondents to re-detain him. *See Grigorian*
20 *v. Bondi*, 2025 WL 2604573 at *9 (S.D. Fl. 2025) (ordering immediate release of
21 habeas petitioner where ICE did not follow procedures for revocation of OSUP);
22 *Lopez Benitez v. Francis*, --- F.Supp.3d ---, 2025 WL 2371588, *15 (S.D.N.Y.
23 Aug. 13, 2025 (finding the provision of a bond hearing before the immigration
24 court to be inadequate and ordering the non-citizen’s immediate release from DHS
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1 custody without finding that DHS had an obligation to provide a pre-deprivation
2 hearing prior to re-detaining the non-citizen).

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4 **III. CONCLUSION**

5 For these reasons and those specified in the initial moving papers, Petitioner
6 respectfully requests that this Court order his immediate release and enjoin
7 Respondents from re-detaining him without a pre-deprivation hearing.
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9 **RESPECTFULLY SUBMITTED this 12th day of October, 2025**

10
11 **/s/ Sabrina Damast**

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