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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Patrik Nazarian,

Petitioner,

v.

Kristi Noem, Secretary of the Department
of Homeland Security; et. al,

Respondents.

Case No.: 5:25-cv-02694-KK-ADS

**PETITIONER'S REPLY TO THE
RESPONDENTS' OPPOSITION TO
THE *EX-PARTE* APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Filed pursuant to FRCP 65(b) and L.R.
7-19 and 65.1

**REPLY TO THE RESPONDENTS' OPPOSITION TO A TEMPORARY
RESTRAINING ORDER**

Undersigned counsel files this brief reply to the Respondents' opposition to the application for a temporary restraining order. In doing so, he briefly highlights the Respondents' admissions that it has not complied with its constitutional and regulatory duties when revoking the order of supervision (OSUP) under 8 C.F.R. § 241.4 and § 241.13; it entirely failed to document the reasons why it decided

1 continue detention, despite the regulations' requiring them to do so; and it does not
2 deny that the unconstitutional Noem and Lyons Memos apply to him.

3 **I. MR. NAZARIAN'S OSUP WAS UNLAWFULLY REVOKED AND HIS**
4 **90-DAY REVIEW DID NOT COMPLY WITH THE REGULATIONS**

5 In addressing the three release-related observations two things are clear: (1)
6 the Respondents have conflated the statutory removal period with reasons the
7 noncitizen can bring a prolonged detention habeas petition if he has not been
8 released after six months and (2) it fails to appreciate that no provision of the
9 Immigration and Nationality Act (INA) explicitly permits a revocation of an OSUP-
10 revocation is authorized through the regulations. So, to the extent that ICE may
11 lawfully revoke an OSUP, the authority comes from the very regulations that it
12 is claiming are meaningless. *See Resp. Opp.* at 4 ("Petitioner complains here that
13 he was not provided a notice of revocation. That is not a basis for filing a habeas
14 petition, much less an *ex parte* TRO Application. Moreover, Petitioner argues that
15 "ICE has not proven the person who revoked supervision was authorized to do so"
16 per 8 C.F.R. § 241.4(l)(2)."). Only the Petitioner's interpretation of the INA and its
17 implementing regulations is consistent with the statutory scheme Congress enacted.

18 As a starting point, the removal period began when the immigration judge
19 ordered removal and no appeal was taken. 8 U.S.C. § 1231(a)(1)(B). As explained
20 in the application for the TRO, the government *shall* detain a noncitizen during the
21 90-day removal period 8 U.S.C. § 1231(a)(2) and it *may* continue to detain or it *may*
22 release under a mandatory order of supervision after the 90-day removal period. 8
23 U.S.C. § 1231(a)(6). The initial 90-day removal period is suspended under one
24 condition- if he fails to participate in securing a travel document or impedes ICE's
25 efforts to effectuate removal. 8 U.S.C. § 1231(a)(1)(C).

26 The Respondents suggest that Mr. Nazarian's only remedy is tied to the due
27 process protections discussed in *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See Resp.*
28 *Opp.* at 4. This makes scant sense for two reasons. First, as discussed above, the

1 removal period is 90 days. It is only forestalled if the noncitizen fails to assist in his
2 removal. The Respondents do not dispute the removal period has lapsed by a
3 decade. Mr. Nazarian was released at the end of this removal period. Therefore,
4 *Zadvydas*, which discusses prolonged detention beyond the presumptively
5 constitutional 180-day removal period has little bearing on someone who was
6 released after 90 days.

7 This misinterpretation bleeds into the second error. The Respondents treat 8
8 U.S.C. § 1231(a)(6) as a continuing right to revoke an OSUP and redetain the
9 Petitioner with no process because they *may* continue the detention of someone who
10 has not been released. *See Resp. Opp.* at 6 (discussing *Jose Angel Morales Sanchez*
11 *v. Pam Bondi, et al.*, 5:25-cv-02530-AB-DTB Dkt. no. 12's interpretation of 8
12 U.S.C. § 1231(a)(2)–(6)). However, neither the Respondents nor *Morales Sanchez*
13 address its glaring omission- no provision in 8 U.S.C. § 1231(a) *authorizes*
14 *revocation of the OSUP*. Instead, this authority is derived from the regulations,
15 which have the force of law. *See 8 U.S.C. § 1231(a)(3)* (“pending removal, *shall be*
16 *subject to supervision under regulations prescribed by the Attorney General*”
17 (emphasis added)). In *Guzman Chavez*, the Supreme Court affirmed this consistent
18 interpretation by holding that 8 C.F.R. § 241.4 and § 241.13 “set out procedures
19 *DHS must follow to impose continued detention after the removal period.*”
20 *Johnson*, 594 U.S. at 529 (emphasis added); and *Noem v. Abrego Garcia*, -- U.S. --,
21 145 S.Ct. 1017, 1019 (2025) (SOTOMAYOR, J. statement on the disposition)
22 (observing that 8 C.F.R. § 241.4(l) provides the procedures to revoke the OSUP).

23 It would be absurd to argue the Respondents have the legal authority to
24 revoke an OSUP because of 8 C.F.R. § 241.4 and § 241.13 and simultaneously
25 argue they cannot be held accountable under the same regulations. Consequently,
26 the only way to consistently interpret the statute and the regulations Congress
27 authorized the Respondents to implement is that all sections 8 C.F.R. §§ 241.4 and
28 241.13 carry the force of law. The Respondents are correct, they have broad

1 discretion to revoke an OSUP. But that is a categorically different question than
2 whether the Respondents must adhere to their regulations to ensure their actions
3 lawful.

4 Thus, as countless of courts have held “[r]ules matter. Hearings matter” and
5 that the remedy for failing to adhere to the regulations governing revoking
6 supervision warrants immediate release from custody.” *See Delkash*, 5:25-cv-
7 01675-HDV-AGR (Dckt. 18) (granting motion for preliminary injunction); *Esmail*,
8 2:25-cv-08325-WLH-RAO (Dckt. 8 (granting TRO) and (Dckt. 14 (granting
9 preliminary injunction); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
10 1993771, at *7 (E.D. Cal. July 16, 2025); *Ceesay, v. Kurzdorfer*, 781 F. Supp. 3d
11 137, 170 (W.D.N.Y. 2025); *Perez-Escobar v. Moniz*, No. 25-cv-11781-PBS, 2025
12 WL 2084102 *1-2 (D. Mass. July 25, 2025); and *See Phong Phan, Petitioner, v.*
13 *Moises Beccerra, Respondent*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at
14 *6 (E.D. Cal. July 16, 2025). Therefore, at a minimum, immediate release is
15 necessary to maintain the status quo while further litigation is pending. *See Phong*
16 *Phan, Petitioner, v. Moises Beccerra, Respondent*, No. 2:25-CV-01757-DC-JDP,
17 2025 WL 1993735, at *6 (E.D. Cal. July 16, 2025).

18 Perhaps the Respondents knew that its argument was fundamentally flawed
19 and that is why they chose not to address the Petitioner’s contention that his right to
20 a 90-day custody review was done without adherence to 8 C.F.R. § 241.4(k).
21 Nowhere in the opposition or its supplemental filings does it allege or provide
22 evidence that it complied with 8 C.F.R. § 241.4(k) and its recordkeeping obligations
23 under 8 C.F.R. § 241.4(d). Again, we are in the same position, the Respondents
24 claim authority to hold the noncitizen under 8 C.F.R. § 241.4 but do not feel obliged
25 to follow the “procedures [it] must follow to impose continued detention after the
26 removal period.” *Johnson*, 594 U.S. at 529 (*emphasis added*). The only way to
27 maintain the status quo during this litigation is to release the noncitizen from
28 detention. *See Phong Phan v. Beccerra*, 2025 WL 1993735, at *6.

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3 **II. THE RESPONDENTS FAIL TO EXPLAIN WHY THE NOEM AND**
4 **LYONS MEMOS ARE CONSTITUTIONAL**

5 In addressing the third country removal claim, what is conspicuously absent
6 from the Respondents' opposition is an admission that it knows the Noem and
7 Lyons memos are unconstitutional or that it will not apply this unlawful policy to
8 the Petitioner. Instead, the Respondents focus solely on its contention that it is
9 *attempting* to remove the Petitioner to Iran. *See Resp. Opp.* at 8. Neither the
10 response nor accompanying declaration rule out the possibility that it may be also
11 attempting to send the Petitioner to a third country now. *And that is the point.* The
12 Noem memo explicitly states that if it has "assurances" that are "credible" that the
13 country will not torture the noncitizen it will provide no notice and no opportunity
14 to challenge removal to that third country. So what evidence would Mr. Nazarian
15 have that the Respondents are planning to remove him to a third country if *they do*
16 *not inform him and stated they will not inform him?* Any "speculation" is caused by
17 the Respondents' conduct in their execution of an unconstitutional policy.
18
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20 Date: 10/30/25

21 Respectfully submitted,

22 /s/ Andres Ortiz

23 Andres Ortiz, Esq.

24 Andres Ortiz Law

25 Attorney for the Petitioner
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Reply to the Respondents' Opposition to a Temporary Restraining Order* in *Patrik Nazarian v. Noem et. al*, with the Clerk of the Court for the Central District of California by using the appellate CM/ECF October 30, 2025, for filing and transmittal of Notice of Electronic Filing

/s/ Andres Ortiz
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