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

HOA VAN NGUYEN,

Petitioner,

v.

SERGIO ALBARRAN, *in his official capacity*
as Acting Field Office Director of San
Francisco Office of Detention and Removal,
U.S. Immigration and Customs Enforcement,

TONYA ANDREWS, *in her official capacity*
as Facility Administrator at Golden State
Annex Detention Center, McFarland,
California,

Respondents.

CASE NO. 1:25-cv-01926-DJC-CSK

**REPLY AND TRAVERSE TO
RESPONDENTS' ANSWER AND
OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS**

I. INTRODUCTION

Petitioner, Mr. Hoa Van Nguyen, is a national of Vietnam who seeks an order from this Court directing his immediate release due to the unconstitutional deprivation of his liberty. On

REPLY AND TRAVERSE TO RESPONDENTS' ANSWER AND OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS - 1

1 September 22, 2025, Respondents unlawfully re-detained Mr. Nguyen while he was under an
2 order of supervision (“OSUP”). See Exhibit A, (Affidavit of Hoa Van Nguyen). This Court should
3 follow the near universal view that the re-detention of a non-citizen without prior notice and
4 revocation of an OSUP is unlawful, and warrants the individual’s immediate release. *See N.D.N.*
5 *v. Bondi*, 1:25-cv-01587-DAD-CKD, 2025 U.S. Dist. LEXIS 229607,*18 (E.D. Cal. Nov. 21,
6 2025); *Minh Nhat Phan v. Noem*, 3:25-cv-02422-RBM-MSB, 2025 U.S. Dist. LEXIS 201411,
7 *8-9 (S.D. Cal. Oct. 10, 2025);

8 **II. MEMORANDUM OF LAW IN SUPPORT OF MOTION**

9 **A. STATEMENT OF FACTS**

10 **1. Mr. Nguyen**

11 In 1976, Mr. Nguyen was born in Vietnam. Exhibit A ¶1. Mr. Nguyen’s father served in
12 the South Vietnamese Army. *Id.* ¶3. Because of his service, Mr. Nguyen, his parents, and his
13 siblings had to flee Vietnam. *Id.* ¶¶3-4. The Nguyen family left Vietnam on a small fishing boat,
14 were rescued at sea, and then brought to a Malaysian refugee camp where they spent the next few
15 years. *Id.* ¶¶4-5.

16 In February 1982, the United States accepted the Nguyen family as refugees, and Mr.
17 Nguyen entered the United States on March 5, 1982. *Id.* ¶5; Doc. 12-1 (Declaration of Deportation
18 Officer, Armando Meneses) ¶6. Mr. Nguyen became a lawful permanent resident, but was ordered
19 deported on October 25, 2001, after serving seven years in the Texas Penitentiary due to a
20 conviction for felony burglary. Exhibit A ¶¶7-9; Doc. 12-1 ¶ 10.

21 On April 8, 2002, Mr. Nguyen was released on an OSUP because his removal was not
22 reasonably foreseeable. Exhibit A ¶10; Doc. 12-1 ¶11. Mr. Nguyen complied with the terms of
23 his release until 2009, when he was convicted in United States District Court in Texas for being
24 a felon in possession of a firearm. Exhibit A ¶¶12-13. In May 2014, Mr. Nguyen was released
25 from federal prison. *Id.* ¶13. ICE released Mr. Nguyen on an OSUP because Vietnam still refused
26

1 to issue a travel Document for him and his removal was not reasonably foreseeable. *Id.* In 2019,
 2 ICE approved Mr. Nguyen's request for transfer of his OSUP from Texas to Sacramento. *Id.* ¶14.

3 From 2019 until September 22, 2025, Mr. Nguyen appeared at ICE's Sacramento Field
 4 Office for an annual check-ins. *Id.* ¶¶15-16. On September 22, 2025, at around 10:30 am, five
 5 plainclothes agents who identified themselves as ICE officers detained Mr. Nguyen at the
 6 Sacramento International Airport as he prepared to board a flight with his fiancé. *Id.* ¶18; Doc.
 7 12-1 ¶15. ICE transported Mr. Nguyen to a building in downtown Sacramento where he was
 8 allowed to meet with his immigration attorney. Exhibit A ¶¶19-22. Mr. Nguyen was transported
 9 to the Mesa Verde Processing Center where he spent the next two months. *Id.* ¶23.

10 On December 6, 2025, ICE transferred Mr. Nguyen to the Golden State Annex. *Id.* At no
 11 point has ICE provided Mr. Nguyen an oral or written explanation as to why he was re-detained
 12 and have not discussed the possibility of removing him to Vietnam. *Id.* ¶¶ 24-26.

13 **III. ARGUMENT**

14 **A. The Government Unlawfully Re-detained Mr. Nguyen**

15 **1. Mr. Nguyen Is Not Subject to Mandatory Detention**

16 The Government failed to comply with its own regulations governing re-detention of
 17 noncitizens not subject to mandatory detention, which, in turn, violated Mr. Nguyen's due
 18 process rights. "The Fifth Amendment's Due Process Clause forbids the Government to
 19 'depriv[e]' any 'person ... of ... liberty ... without due process of law.' Freedom from
 20 imprisonment—from government custody, detention, or other forms of physical restraint—lies
 21 at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct.
 22 2491 (2001). Notwithstanding that the government released Mr. Nguyen on an order of
 23 supervision, Respondents premise the objection to the petition on ICE's position that Petitioner
 24 was re-detained because he is subject to mandatory detention under Sections 241(a)(2), (a)(6) of
 25 the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1231(a)(2), (a)(6). Doc. 12, Doc. 12-
 26 1 ¶¶15, 17.

1 Petitioner is not subject to mandatory detention. Section 1231 governs the procedures for
2 the detention and removal of aliens that are subject to an order of removal. *Id.* Section (a)(1)(A)
3 provides as follows: “Except as otherwise provided in this section, when an alien is ordered
4 removed, the Attorney General shall remove the alien from the United States within a period of
5 90 days (in this section referred to as the ‘removal period’).” 8 U.S.C. § 1231(a)(1)(A). “The
6 removal period shall be extended beyond a period of 90 days, and the alien may remain in
7 detention during such extended period if the alien fails or refuses to make timely application in
8 good faith for travel or other Documents necessary to the alien’s departure or conspires or acts to
9 prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(A). The statute
10 further provides that “[d]uring the removal period, the Attorney General shall detain the alien.” 8
11 U.S.C. § 1231(a)(2)(A).

12 Respondents claim Mr. Nguyen is subject to mandatory detention under 8 U.S.C. §
13 1231(a)(2). Doc. 12-1 ¶15. The statute and case law interpreting the plain language demonstrate
14 that Respondents’ position is wrong. First, “[i]f the alien does not leave or is not removed within
15 the removal period, the alien, pending removal, shall be subject to supervision under regulations
16 prescribed by the Attorney General.” *See* 8 U.S.C. § 1231(a)(3). Alternatively, certain categories
17 of noncitizens, including those ordered removed under 8 U.S.C. § 1227(a)(2), “may be detained
18 beyond the removal period and, if released, shall be subject to the terms of supervision in
19 paragraph (3).” *See* 8 U.S.C. § 1231(a)(6).

20 In *Zadvydas*, 533 U.S. at 701, the Supreme Court held that “for the sake of uniform
21 administration in the federal courts,” there exists a “presumptively reasonable period of
22 detention” of six months—the 90-day removal period plus an additional 90 days. Mr. Nguyen
23 was released on an order of supervision in April 2002, and again in May 2014. Exhibit A; Doc.
24 12-1 ¶11. Thus, the government can no longer claim he remains subject to mandatory detention
25 *during the removal period or that such period is suspended.* 8 U.S.C. §§ 1231(a)(1)(A), (C).

1 Nothing in the text of 8 U.S.C. §§ 1231(a)(1)-(3) supports Respondents' position that a
2 noncitizen is subject to mandatory detention under 8 U.S.C. § 1231(a)(2) following his release on
3 an order of supervision. *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS
4 136002, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025). Doc. 12; Doc. 12-1 ¶¶ 15, 17. As
5 other courts have explained, a re-detention after release on an OSUP "is not your typical first
6 round detainment of an alien awaiting removal." *Escalante v. Noem*, No. 9:25-CV-00182-MJT,
7 2025 U.S. Dist. LEXIS 148899, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025). When an
8 immigrant "was previously detained, then released on supervised release, . . . his 90-day removal
9 period has long expired." *See Balouch v. Bondi*, No. 9:25-CV-216-MJT, 2025 U.S. Dist. LEXIS
10 199955, 2025 WL 2871914, at *2 (E.D. Tex. Oct. 9, 2025).

11 Mr. Nguyen was released from detention in April 2002, following the expiration of the
12 removal period on an OSUP in accordance with 8 U.S.C. § 1231(a)(3). Doc. 12-1 ¶ 11. ICE
13 released Mr. Nguyen from custody on an order of supervision because there was no significant
14 likelihood of removal in the reasonably foreseeable future. Exhibit A. This finding is significant
15 not only because it shows the removal period has now long passed, but it also confirms that the
16 revocation of Mr. Nguyen's OSUP was governed by § 241.13(i). As another judge of this court
17 has recently acknowledged:

18
19 Upon release, a noncitizen subject to a final order of removal must
20 comply with certain conditions of release. The revocation of that
21 release is governed by 8 C.F.R. § 241.13(i), which authorizes ICE
22 to revoke a noncitizen's release for purposes of removal.
23 Specifically, a noncitizen's release may be revoked 'if, on account
24 of changed circumstances,' it is determined that 'there is a
25 significant likelihood that the [noncitizen] may be removed in the
26 reasonably foreseeable future.'

27 *Hoac*, 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at *3 (E.D. Cal. July 16, 2025).

28 Respondents' premise that the removal period never ended contravenes the unambiguous
text of 8 U.S.C. § 1231. Doc. 12. There is no textual reading of the statute that would allow

1 Respondents to claim the 90 day removal period continued to run indefinitely, and after
2 Petitioner's release on an OSUP, such that the government could re-detain him in September
3 2025, without complying with the governing regulations. *Id.* The INA provides for a "period"
4 with a specific beginning, 8 U.S.C. § 1231(a)(1)(B), and conditions of "Supervision after [the]
5 90-day period," 8 U.S.C. § 1231(a)(3). Petitioner was released on an OSUP, and thus "pending
6 removal, shall be subject to supervision under regulations prescribed by the Attorney General."
7 *Id.* Accordingly, Respondents have incorrectly found Petitioner is subject to mandatory detention
8 under 8 U.S.C. § 1231(a)(2). Doc. 12-1 ¶ 15.

9
10 **2. Respondents Did Not Comply With The Regulations at 8 C.F.R. § 241.13(i)
Prior to Re-detaining Mr. Nguyen**

11 The statute and regulations undermine Respondents' asserted basis for re-detaining Mr.
12 Nguyen, and also demonstrates that the government did not act in accordance with the regulations
13 at the time it re-detained Petitioner. Doc. 12, 12-1, 12-2. The regulation at 8 C.F.R. § 241.13(i),
14 authorizes the government to revoke a noncitizen's release for purposes of removal "if, on account
15 of changed circumstances," it is determined that "there is a significant likelihood that the
16 [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Upon
17 such a determination:

18
19 [T]he alien will be notified of the reasons for revocation of his or
20 her release. The Service will conduct an initial informal interview
21 promptly after his or her return to Service custody to afford the
22 alien an opportunity to respond to the reasons for revocation stated
23 in the notification. The alien may submit any evidence or
24 information that he or she believes shows there is no significant
25 likelihood he or she be removed in the reasonably foreseeable
26 future, or that he or she has not violated the order of supervision.
27 The revocation custody review will include an evaluation of any
28 contested facts relevant to the revocation and a determination
whether the facts as determined warrant revocation and further
denial of release.

29 *Id.* § 241.13(i)(3).

1 As to the burden of proof, it must be kept in mind that after *Zadvydas*, the immigration
2 regulations were revised to implement administrative review procedures for those aliens
3 detained beyond the removal period, including those who are re-detained upon revocation of
4 their [OSUP].” *Escalante*, 2025 U.S. Dist. LEXIS 148899, 2025 WL 2206113, at *3. Under
5 this regulation, “it is [ICE’s] burden to show a significant likelihood that the alien may be
6 removed.” *J.L.R.P. v. Wofford*, No. 1:25-CV-01464-KES-SKO (HC), 2025 WL 3190589, at
7 *4 (E.D. Cal. Nov. 14, 2025) (citation modified).

8 ICE’s decision to re-detain Mr. Nguyen was therefore governed by the factors laid out
9 in 8 C.F.R. § 241.13(f), including “the history of the [non-citizen’s] efforts to comply with
10 the order of removal, the history of [ICE’s] efforts to remove [non-citizens] to the country in
11 question or to third countries, including the ongoing nature of [ICE’s] efforts to remove [the
12 non-citizen] and the [non-citizen’s] assistance with those efforts, the reasonably foreseeable
13 results of those efforts, and the views of the Department of State regarding the prospects for
14 removal of [non-citizens] to the country or countries in question.” *Phan v. Beccerra*, No. 2:25-
15 CV-01757, 2025 WL 1993735, at *3 (E.D. Cal. July 16, 2025). A court may not make this
16 determination in the first instance, but may review it for compliance with the regulation. *See*
17 *id.*; *Minh Nhat Phan*, 3:25-, 2025 U.S. Dist. LEXIS 201411, *8-9; *Nguyen v. Hyde*, No. 25-
18 cv-11470-MJJ, 2025 WL 1725791, at *3 (D. Mass. June 20, 2025) (citing *Kong v. United*
19 *States*, 62 F.4th 608, 620 (1st Cir. 2023)).

20 Here, ICE re-detained Mr. Nguyen without complying with the regulations. ICE
21 blindsided Mr. Nguyen at the Sacramento airport and held him in custody since September
22 22, 2025 in violation of law. Exhibit A ¶¶ 18-23; Doc. 12-1. The government concedes that
23 it made no attempt to determine whether changed circumstances existed until after it re-
24 detained Mr. Nguyen, Doc. 12-1 ¶ 16, and has not met its burden of showing compliance with
25 the findings in the regulation. *Id.* ICE provided Mr. Nguyen with no evidence of changed
26 circumstances and there was no legitimate, non-punitive change in circumstance which makes
27

1 his removal reasonably foreseeable. Exhibit A ¶¶18-27.

2 The government's re-detention of Mr. Nguyen, without following the requisite
3 procedures to revoke his OSUP and comply with 8 C.F.R. §§ 241.13(f), (i) warrants his
4 immediate release. *J.L.R.P.*, 2025 WL 3190589, at *4-5; *see Alcaraz v. INS*, 384 F.3d 1150,
5 1162 (9th Cir. 2004) ("The legal proposition that agencies may be required to abide by certain
6 internal policies is well-established."). "Where the rights of individuals are affected, it is
7 incumbent upon agencies to follow their own procedures. This is so even where the internal
8 procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*,
9 415 U.S. 199, 235 (1974).

10 There are no "changed circumstances" which make it significantly likely that Mr.
11 Nguyen will be removed in the foreseeable future. 8 C.F.R. § 241.13(i)(2). ICE did not notify
12 Mr. Nguyen of the "reasons for revocation of [his] release," conduct "an initial informal
13 interview promptly after [her] . . . return to [ICE] custody to afford [him] an opportunity to
14 respond to the reasons for revocation stated in the notification," allow him to "submit any
15 evidence or information that he or she believes shows there is no significant likelihood he or
16 she [will] be removed in the reasonably foreseeable future," or provide him with a written
17 "revocation custody review." *Id.* § 241.13(i)(3); *see also Phan*, 2025 WL 1993735, at *3.
18 Moreover, ICE did not consider the factors in § 241.13(f) that govern their decision to re-
19 detain a noncitizen previously released. Accordingly, Mr. Nguyen has presented a meritorious
20 claim for his immediate release. *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017)
21 ("Unlawful detention certainly constitutes 'extreme or very serious damage, and that damage
22 is not compensable in damages.'")
23

24 **IV. CONCLUSION**

25 For the foregoing reasons, the Court should grant Petitioner's habeas petition and deny
26 Respondents' motion to dismiss. The Court should order Respondents to immediately release
27

Petitioner from detention under the conditions of his most recent order of supervision. Should Respondents, or any officers purporting to have the authority to do so, seek to detain or remove Mr. Nguyen to Vietnam or a third country, this Court should order Respondents to afford Mr. Nguyen with notice and a meaningful opportunity to respond,

January 12, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jesse M. Bless , hereby certify that on January 12, 2026, I served the above and foregoing, by causing a true and accurate copy of such papers to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Jesse M. Bless

Jesse M. Bless

Bless litigation LLC

REPLY AND TRAVERSE TO RESPONDENTS' ANSWER AND OPPOSITION TO RESPONDENTS' MOTION TO DISMISS - 9