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HOA VAN LE

**United States District Court
Central District of California**

Hoa Van Le

Petitioner,

v.

Mark Bowen, et al.

Respondents.

No. 5:25-cv-03586-CV-BFM

**Petitioner's Reply in Support of
Motion for Temporary
Restraining Order**

Petitioner Hoa Van Le, by and through undersigned counsel, respectfully submits this Reply in support of his Motion for a Temporary Restraining Order ("TRO") ("Motion," ECF No. 2). For all the reasons stated herein, in the Motion, and in his verified Petition for Writ of Habeas Corpus ("Petition," ECF No. 1), this Court should grant Le's Motion and grant the relief requested therein.

I. INTRODUCTION

The Government's Opposition ("Opposition," ECF No. 8) relies on assertions that have been systematically rejected by courts in this District. Respondents argue that their "broad discretion" allows them to ignore the mandatory procedural requirements of 8 C.F.R. §§ 241.4 and 241.13, and that a generic claim of increased removals to Vietnam suffices to justify re-detaining an elderly, medically fragile refugee who has complied with his

1 release conditions for over 24 years and thus has a vested liberty interest in
2 his freedom. These arguments fail as a matter of law. Because the
3 Government has violated Le's due process rights and failed to substantiate
4 its claims of changed circumstances with individualized evidence, the status
5 quo—Le's release on his original supervision order—must be restored to
6 prevent further irreparable injury. *See Tabatabaee v. Noem*, No. EDCV 25-
7 2968 JGB (JCX), 2025 WL 3303970, at *5 (C.D. Cal. Nov. 25, 2025); Order
8 Granting Preliminary Injunction at 14, *Ton v. Noem*, No. 5:25-cv-03348-
9 DMG-DSR (C.D. Cal. Dec. 22, 2025, ECF No. 12).

10 II. ARGUMENT

11 A. Le is likely to succeed on the merits.

12 1. Respondents flouted their own mandatory regulations in 13 violation of the *Accardi* doctrine.

14 a. Respondents do not have “broad discretion” to 15 ignore the law.

16 Respondents assert they possess “broad authority” to revoke release
17 at any time. Opp. at 7-8. This is incorrect. “The government can only
18 detain individuals outside of the criminal context in ‘certain special and
19 “narrow” nonpunitive “circumstances.”” *Tabatabaee*, 2025 WL 3303970,
20 at *2 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). “Where the
21 rights of individuals are affected, it is incumbent upon agencies to follow
22 their own procedures.” *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *see also*
23 *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266-68 (1954).
24 Sections 241.4 and 241.13 are not suggestions; they are mandatory
25 procedural guards. The following violations, separately and together,
26 warrant Mr. Le's release.
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b. Respondents' Notice of Revocation was unlawfully vague.

As noted in the Petition (ECF No. 1 at 13-16), due process and the governing regulations require that a notice of revocation identify the specific reasons for the revocation to provide a meaningful opportunity to be heard. Respondents' Notice of Revocation of Release falls far short of this standard, providing only two vague and conclusory assertions: (1) that ICE made "a determination that there are changed circumstances in [Le's] case," and (2) that "ICE has determined there is a significant likelihood of removal in the reasonably foreseeable future." ECF No. 8-1 at 18. Courts have repeatedly found this language insufficient to satisfy the notice requirements of 8 C.F.R. § 241.13(i)(3). *See, e.g., Minh Xuan Nguyen v. Noem*, No. 8:25-CV-02654-HDV-DSR, 2025 WL 3898489, at *6 (C.D. Cal. Dec. 19, 2025) (noting that "[c]ourts in this district, circuit, and across the country have held that such a vague, generic statement is insufficient notice" and collecting cases); *Morales Sanchez v. Bondi*, No. 5:25-CV-02530-AB-DTB, 2025 WL 3651899, at *5 (C.D. Cal. Dec. 5, 2025) ("[A] generic notice stating only that officials 'review[ed] [the] file' and determined 'there are changed circumstances' fails to comply with the regulation or provide meaningful notice sufficient for due process."); Order Granting TRO at 9, *Loc Huu Nguyen v. Noem*, No. 5:25-cv-03191-WLH-MAR (C.D. Cal. Dec. 1, 2025, ECF No. 9) (notice that "does not 'identify any specific changed circumstances'" was insufficient). This Court should likewise find that Respondents' notice unsatisfactory here.

c. Respondents failed to provide a prompt interview.

8 C.F.R. § 241.13(i)(3) also requires that “[t]he Service will conduct 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.” 8 C.F.R. § 241.13(i)(3) (emphasis added); *see also* Petition at 13-15. Here, Le has been detained since October 16, 2025—**83 days**—without an interview. *See* Opp. at 2, 8-9. Courts in this circuit have recognized that, this long after Le’s arrest, a sufficiently prompt interview is not possible. *See, e.g., Duong v. Noem*, No. 25-CV-3142 JLS (SBC), 2025 WL 3268414, at *3 (S.D. Cal. Nov. 24, 2025) (“Six weeks later is hardly ‘promptly after [her] return to . . . custody’ as required by § 241.13(i)(3).”); *Truong v. Noem*, No. 25-CV-2597-JES-MMP, 2025 WL 2988357, at *5 (S.D. Cal. Oct. 22, 2025) (“‘Upon revocation’ cannot possibly be interpreted to mean nearly three months later.”); *cf. Morales Sanchez*, 2025 WL 3651899, at *6 (releasing detainee where, as of the 79th day of detention, ICE had not afforded the requisite interview). As such, Respondents have not and cannot provide the prompt interview Le was owed.

d. Respondents failed to meet their regulatory burden of identifying changed circumstances justifying Le’s re-detention.

8 C.F.R. § 241.13(i)(2) requires that, in the absence of a violation of conditions of release, the Service may only revoke a noncitizen’s supervised release “*on account of* changed circumstances . . . [demonstrating] a significant likelihood that the alien may be removed in the reasonably foreseeable future.” *See* 8 C.F.R. §

1 241.13(i)(2). As such, Respondents have the burden of proving that they
2 identified adequate and relevant changed circumstances regarding Le's
3 removability to Vietnam, and that those changes were the reason for the
4 revocation of his release. *See Minh Xuan Nguyen*, 2025 WL 3898489, at
5 *7 n.4 ("The Court finds that this regulation governing revocation of
6 supervised release places the burden on the government to establish
7 changed circumstances rendering 'reasonably foreseeable' removal
8 'significant[ly] likel[y].' The Court thus need not reach Petitioner's
9 argument that the government bears that same burden for a different
10 reason: because he has been detained longer than the six months—
11 counting the time he was detained in the nineties before he was released
12 on supervision—identified as presumptively reasonable in *Zadvydas*.").
13 Le will address Respondents' lack of evidence of changed circumstances
14 in the next section, but notes here that, while Le believes he has more
15 evidence of a lack of changed circumstances than Respondent has of
16 alleged changed circumstances, that Respondent actually bears the
17 burden of proof under its own regulations, and fails to satisfy that burden
18 for the reasons that follow.
19

20 Each of the aforementioned regulatory violations, taken alone or
21 together, are sufficient basis for Le's release. *See Minh Xuan Nguyen*,
22 2025 WL 3898489, at *7 ("A growing number of courts—including this
23 one—have found that the government's failure to follow its release
24 revocation procedures renders the re-detention unlawful and requires
25 release. . . . And to the extent another layer of analysis is required, the
26 Court again would follow its sister courts in finding that the failure to
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1 follow these procedural requirements violates the due process clause.”)
2 (internal citations omitted).

3 **2. Respondents have the burden of proving changed**
4 **circumstances making Le’s removal reasonably likely in**
5 **the foreseeable future, but they have not met that**
6 **burden.**

7 Respondents make two arguments regarding their burden under
8 *Zadvydas*: (1) that their arbitrary re-detention of Le somehow restarts
9 the *Zadvydas* due process clock, putting the burden on Le to prove a lack
10 of changed circumstances until his most recent stint in custody has lasted
11 six months (Opp. at 2, 4-5), and (2) that generic allegation of improved
12 relations with Vietnam and their anecdotal ability to remove scant other
13 detainees to Vietnam proves circumstances have changed (Opp. at 5-7).
14 Both arguments are unavailing.

16 First, as noted in section II.A.1.d above, Respondents have the
17 burden of proving changed circumstances due to their own regulations.

18 Second, courts have rejected Respondents’ “restart the clock”
19 argument, meaning that, after six or more months of *cumulative* post-
20 removal order detention, the burden also shifts to Respondents. *See Luu*
21 *v. Bowen*, 2025 WL 3552298, at *7 (C.D. Cal. Dec. 11, 2025); *Phu Van Ta*
22 *v. Noem*, No. 5:25-CV-02902-MEMF-JDE, 2025 WL 3716155, at *4-6
23 (C.D. Cal. Nov. 10, 2025) (quoting *Nguyen v. Scott*, No. 2:25-CV-01398,
24 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025)). Here, Le has been
25 detained from September 25, 2001 to January 11, 2002, and from October
26 16, 2025 through and including January 7, 2026. As such, the six months
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1 have elapsed and Respondent also bears the burden of proof under
2 *Zadvydas*.

3 Third, either way, Respondents have not met their burden. Indeed,
4 even if Le had the burden, he has met it. As Judge Gee held in *Ton*:

5 To the extent the Government relies on Judge
6 Carney's opinion in *Trinh* as evidence to deny the MPI,
7 the Court is not persuaded. First, the discussion of the
8 ability to obtain travel documents for Vietnamese
9 immigrants in *Trinh* is more than five years old and,
10 as discussed throughout this Order, the situation is
11 evolving and individualized. Second, the basis for the
12 2020 Order was that a "small but nonnegligible"
13 portion of travel documents were issued on an
14 individualized, case-by-case basis. 466 F. Supp. 3d at
15 1089–90. That conclusion supports Ton's argument
16 that the Government has failed to meet its burden to
17 show that there is a significant likelihood Ton will be
18 one of the handful of people to receive his travel
19 documents in the reasonably foreseeable future.

20 Order Granting Preliminary Injunction at 10 n.8, *Ton v. Noem*, No. 5:25-cv-
21 03348-DMG-DSR (C.D. Cal. Dec. 22, 2025, ECF No. 12). This lack of
22 evidence of individualized changed circumstances raises, at minimum,
23 serious questions as to the legality of Le's revocation of release.
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1 **B. While unlawful detention is quintessential irreparable**
2 **harm, Le’s recent stroke and need for rehabilitative**
3 **therapy significantly heighten that harm.**

4 “It is well established that the deprivation of constitutional rights
5 “unquestionably constitutes irreparable injury.”” *Hernandez v. Sessions*,
6 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d
7 990, 1002 (9th Cir. 2012)). “Deprivation of physical liberty by detention
8 constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767
9 (9th Cir. 2018) (citing *Hernandez*, 872 F.3d at 994). Even without his
10 grave medical needs, Le “suffers potentially irreparable harm every day
11 that he remains in custody without a hearing, which could ultimately
12 result in his release from detention.” *Cortez v. Sessions*, 318 F. Supp. 3d
13 1134, 1139 (N.D. Cal. 2018) (citation omitted).

14
15 But Le’s circumstances are particularly dire. In August 2025, Le,
16 already a man of advanced age, suffered a severe ischemic stroke, and
17 now is suffering from weakness of the face, arms, and legs, and other
18 severe neurological impairments, that Respondents’ mere provision of
19 medication cannot abate. Petition at 7-8. These harms from Le’s unlawful
20 detention support his release.

21 **C. The balance of hardships and public interest tips sharply**
22 **in Le’s favor, meaning he need only raise serious questions**
23 **as to the merits of any one of his claims.**

24 Under the Ninth Circuit’s sliding scale, when the balance of equities
25 tips sharply in the plaintiff’s favor, they need only raise “serious
26 questions” on the merits. *Fellowship of Christian Athletes*, 82 F.4th 664,
27 684 (9th Cir. 2023). And, where the government is the opposing party,
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1 balancing of the equities and the public interest merge, with the lawful
2 outcome being the best outcome for all involved. *See Nken v. Holder*, 556
3 U.S. 418, 435 (2009).

4 Le has now spent more than six months post-removal order in ICE
5 detention with, at minimum, serious questions as to whether that
6 detention is lawful, where he has a grave liberty interest in his freedom,
7 and Respondents have no legitimate interest in detaining him unlawfully.
8 He is 73 years old, medically fragile, cannot read or write well in any
9 language, and is separated from the people who can and will best
10 advocate on his behalf. Meanwhile, Respondents have no legitimate
11 interest in perpetuating unlawful detention. *See de Jesus Ortega*
12 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“deprivation of
13 constitutional rights unquestionably constitutes irreparable injury”).
14

15 **D. Given that both parties have had an opportunity for**
16 **briefing, the Court may convert this TRO motion into a**
17 **motion for a preliminary injunction and grant Le a**
18 **preliminary injunction pending the resolution of his**
19 **Petition.**

20 Where, as here, both parties have had an opportunity for briefing, the
21 Court may convert an application or motion for a TRO into one for a
22 preliminary injunction. *See, e.g.,* Order Granting Preliminary Injunction at
23 2, *Ton v. Noem*, No. 5:25-cv-03348-DMG-DSR (C.D. Cal. Dec. 22, 2025, ECF
24 No. 12); *Tabatabaee*, 2025 WL 3303970, at *2 (“Because both parties have
25 had an opportunity to file briefs, the Court converts the TRO into a
26 preliminary injunction.”). Here, where Le has made such a strong showing
27 of his entitlement to relief, and Respondents have had several months to
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1 remove Le but failed to do so, this case warrants conversion to a
2 preliminary injunction in Le's favor so that he can return to the status quo
3 pending the adjudication of his Petition.

4 III. CONCLUSION

5 For the foregoing reasons, Le satisfies the prerequisites for a TRO and
6 a preliminary injunction. The Court should grant the TRO and/or the PI
7 and restore the status quo—Le's former order of supervised release—
8 pending the resolution of his habeas petition.

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10 Respectfully submitted,

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12 Federal Public Defender

13 Dated: January 7, 2026

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