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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

N-E-M-B-, an adult,

Petitioner,

v.

CAMMILLA WAMSLEY, et al.,

Respondents.

Case No.: 3:25-cv-00989-SI

RESPONDENTS' SUR-RESPONSE TO PETITIONER'S REPLY

Pursuant to the Court's Order dated October 14, 2025, ECF 22, Respondents submit this targeted sur-response to address two issues Petitioner raises in his Reply, ECF 19. Specifically, Petitioner questions the credibility of Assistant Field Office Director Jeffrey Chan's sworn declaration dated July 23, 2025 ("July 23 Chan Declaration"), ECF 17, and requests alternative relief in the form of an order that Respondents may not transfer "Petitioner from the District of Oregon without 30 days' notice of their intent to do so, to give him the opportunity to challenge any" detention he believes is unlawful, ECF 19 at 20.[1]

ARGUMENT

A. The Court Should Credit the Assurances in the July 23 Chan Declaration

The July 23 Chan Declaration states that the Office of Enforcement and Removal Operations ("ERO") will not detain Petitioner pending the resolution of his Board of Immigration Appeals ("BIA") appeal absent a change in circumstances. Specifically, that declaration states that ERO "will not detain Petitioner again through the adjudication of his pending BIA appeal, absent criminal activity, failure to comply with release requirements set by ERO, or a change in Petitioner's pending case with BIA." ECF 17 ¶ 8. Based on these assurances, absent criminal activity or the failure to comply with the terms of release, the earliest ERO might detain Petitioner is sometime after his BIA appeal is adjudicated. As previously discussed,

[1] Respondents do not concede all other arguments raised in the Reply. For example, Respondents do not concede that an individualized determination needs to be made to revoke an Order of Release on Recognizance.

adjudication of the BIA appeal could take over a year from its filing. *See* ECF 16 at 6. Given ICE's assurance not to detain Petitioner during the pendency of his BIA appeal, and the speculative nature of potential future harm, the Court should deny the Petition as moot.

Petitioner wrongly claims that the July 23 Chan Declaration's assurances are an "insufficient barrier" to Petitioner's detention. ECF 19 at 14. He argues (either explicitly or impliedly) that the government's assurances are not credible and should be given no weight. *See id.* at 15 n.10. The basis for this argument is his assertion that "the accuracy of Respondents' declarations has been at issue in multiple habeas cases recently before this Court." *Id.*

Under Petitioner's theory, if the accuracy of an agency's sworn statements in one case is at issue, a district court should not give weight to the agency's sworn statements in other unrelated cases. This Court should reject Petitioner's attempt to discredit the July 23 Chan Declaration's assurances about Petitioner's possible future detention. That declaration is unrelated to the other habeas cases Petitioner references, and Petitioner provides no basis to undermine the sufficiency of the assurances stated in the July 23 Chan Declaration. *Cf. Ctr. for Med. Progress v. United States Dep't of Health & Hum. Servs.*, No. 21-cv-642, 2022 WL 4016617, at *17 (D.D.C. Sept. 3, 2022) (noting in Freedom of Information Act matter that "[w]hen considering whether an agency declaration was made in bad faith, '[t]he sufficiency of the affidavit[ ] is not undermined by a mere allegation of agency misrepresentation

or bad faith, nor by past agency misconduct in other unrelated cases'") (citation omitted).

B. The Court Should Not Issue an Order that Could Preclude Any Future Detention of Petitioner

As an alternative to the relief sought in the Petition, Petitioner seeks an order that, among other things, Respondents may not transfer "Petitioner from the District of Oregon without 30 days' notice of their intent to do so" to give him the opportunity to file a habeas petition to challenge any future detention he believes is unlawful. ECF 19 at 20.

Oregon does not have the necessary facilities to detain subjects overnight. Declaration of Jeffrey Chan dated October 24, 2025 ("Oct. 24 Chan Declaration") at ¶¶ 4–8. Consequently, any order that prevents ICE from transferring Petitioner to another district without first giving Petitioner 30-days' notice would effectively preclude ICE from detaining Petitioner for at least 30 days. *Id.*

Such an order would also preclude Petitioner's detention for at least 30 days, even if the future factual circumstances differ from those in the present habeas proceeding. For example, if the Court grants this alternative relief, and Petitioner fails to comply with his reporting requirements—a fact that would implicate he is a flight risk—ERO would have to wait at least 30 days before it could detain Petitioner. In this hypothetical, giving Petitioner 30 days' notice after he has already engaged in activity indicating he could be a flight risk only makes it less likely that Petitioner would report for detention. *Cf. AAA Bonding Agency Inc. v. U.S. Dep't of Homeland Sec.*, 447 F. App'x 603, 611 (5th Cir. 2011) (referring to a notice of appearance for

removal sent to an alien as a "'run letter' because once the alien knows of his or her removal date the flight risk increases and the alien frequently fails to surrender").

Notably, granting Petitioner's alternative relief ensures that Petitioner could not be detained by ERO for 30 days even if he commits a crime. Such a sweeping pre-detention notice requirement would inhibit ERO's ability to act when there is a need for prompt government action. Even in non-immigration contexts, courts have recognized that pre-deprivation process may be unwarranted, particularly where there is a need for prompt government action. "The necessity of quick action can arise where the government has an interest in protecting public health and safety." *Lamoreaux v. Kalispell Police Dep't*, No. 16-cv-0089, 2016 WL 6078274, at *4 (D. Mont. Oct. 17, 2016) (citing *Mackey v. Montrym*, 443 U.S. 1, 17 (1979)), *report and recommendation adopted,* 2016 WL 6634861 (D. Mont. Nov. 8, 2016). *Cf. Edmondson v. City of Boston*, 1990 WL 235426, at *2 (D. Mass. Dec. 20, 1990) (noting that "[i]n the context of an arrest . . . quick action is necessary and predeprivation process is, at best, impractical and unduly burdensome"). Granting Petitioner's request for alternative relief could impede ERO's ability to fulfill the duties it has been charged with, and the Court should decline to issue such broad relief.

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CONCLUSION

For the foregoing reasons, and for the reasons stated in the Response to the Petition, the Court should deny the Petition and reject the alternative relief sought in Petitioner's Reply.

Respectfully submitted this 24th day of October 2025.

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