DETAINED

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

Deng Peter Makuey, *Petitioner,* v. Bruce Scott, et. al., *Respondents.*	Case No.: 2:25-cv-2135 PETITIONER'S RESPONSE TO RETURN OF HABEAS Agency File Number: [redacted]

Petitioner Deng Peter MAKUEY, a stateless non-citizen, has been incarcerated by ICE at the Northwest ICE Processing Center (NWIPC) for 137 days, since July 14, 2025. Dkt. 10-8. In aggregate, including his 2012 detention, Mr. Makuey has been detained for 240 days, about eight (8) months. *Id., see also* Dkt. 11, Booth Decl. ¶¶ 6-9; Dkt. 14, Pet. Decl. ¶¶ 41-42. Despite the government's unsupported and erroneous claim otherwise, Mr. Makuey is not a citizen of South Sudan. Nor is he a citizen of Ethiopia. He is stateless, and his removal is therefore not reasonably foreseeable. His continued detention is presumptively unreasonable and is unlawful.

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Furthermore, the revocation of Mr. Makuey's OSUP did not comply with applicable regulations, and his re-detention lacked basic procedural due process protections.

Mr. Makuey's detention serves no legitimate, nonpunitive purpose, and is in violation of the Due Process Clause of the Fifth Amendment of the U.S. Constitution and is therefore unlawful. He is thus entitled to immediate habeas relief.

LEGAL ARGUMENT

I. Petitioner's detention is in violation of his due process rights.

The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person "of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. The "Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Dejesus v. Bostock*, No. 25-cv-01427-JHC-TLF, 2025 U.S. Dist. LEXIS 230827, at *4-5 (W.D. Wash. Nov. 24, 2025) (*quoting Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (collecting cases)). Freedom from government custody "lies at the heart of the liberty" protected by the Due Process Clause. *G.S. v. Bostock*, No. 2:25-cv-01255-JNW-TLF, 2025 U.S. Dist. LEXIS 214975, at *22-23 (W.D. Wash. Oct. 8, 2025) (*quoting Zadvydas*, 533 U.S. at 690). For that reason, nonpunitive government detention violates the Due Process Clause unless the detention is ordered "in certain special and narrow… circumstances, where a special justification… outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* Lastly, indefinite civil detention is unlawful. Detention of more than six months is "presumptively unreasonable." *Zadvydas*, 533 U.S. at 701.

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Here, Petitioner was entitled to, at minimum, a re-detention hearing before a neutral arbiter before being re-detained by the Respondents. *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 LX 390163, at *4 (W.D. Wash. Aug. 19, 2025) (*citing Guillermo M.R. v. Kaiser*, _ F. Supp. 3d _, No. 25-cv-05436-RFL, 2025 U.S. Dist. LEXIS 138205, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025)); see also *Ramirez Tesara v. Wamsley,* No. 2:25-cv-01723-MJP-TLF, 2025 U.S. Dist. LEXIS 179205, 2025 WL 2637663, at *4 (W.D. Wash. Sept. 12, 2025) (*quoting E.A. T.-B*, 2025 WL 24-2130, at *4); *Francois v. Wamsely*, No. C25-2122-RSM-GJL, 2025 U.S. Dist. LEXIS 216262, at *13 (W.D. Wash. Nov. 3, 2025). Furthermore, because the Petitioner has been detained more than six months in aggregate and he has sufficient reason to believe his removal is not reasonably foreseeable, his detention has now become presumptively unreasonable, and the burden is on the government to rebut that presumption. *Zadvydas*, 533 U.S at 682. The government's contention that Petitioner is a "danger to the community" is also without merit, since ICE already deemed him not to be "a danger" as recently as May 1, 2024, when they renewed his OSUP. Dkt. 10-6. No circumstances have changed in the past 16 months, and it has now been seven (7) years since Mr. Makuey's last criminal arrest (six from his last criminal conviction), during which time, as noted above, he has been sober, employed, financially stable, a loving partner and stepparent, and is expecting his first child in about 10 days. Dkt. 14, Pet. Decl. ¶¶ 24-38; *see also* Dkts. 13-1, 13-2, 13-4 (Pet. Exhs. 1-3; letters of support, collectively).

A. Mr. Makuey's detention is indefinite and therefore unlawful.

The authority of ICE to detain noncitizens under federal law derives from 8 U.S.C. § 1231. *United States v. Richard Ho*, No. 25-CR-00003 (JAV), 2025 U.S. Dist. LEXIS 178211, at

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*8-9 (W.D. Wash. Sep. 11, 2025) (*citing Quoc Chi Hoac v. Becerra*, No. 25-cv-1710, 2025 U.S. Dist. LEXIS 136002, 2025 WL 1993771, at * 3 (E.D. Cal. July 16, 2025)). Under that statute, the government must hold a noncitizen in custody during the 90-day "removal period" after entry of a final removal order. *Id.* (*citing* 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S at 682). After the 90-day removal period, the government "may" continue to detain the noncitizen who still remains in the United States or release the noncitizen under supervision. *Id.* (*citing* 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S at 682). A total detention of six months is presumptively reasonable. *Id.* at 701. After six months, a petitioner challenging his detention must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* The burden then shifts to the government to come up with "evidence sufficient to rebut that showing." *Id.*

1. Mr. Makuey has been detained more than six months in aggregate and his detention is now presumptively unreasonable.

Here, Mr. Makuey's detention is presumptively unreasonable because it exceeds six months in aggregate. A petitioner's total length of confinement need not be consecutive to reach the six-month presumptively reasonable limit established in *Zadvydas. See Phong Thanh Nguyen v. Scott*, -- F. Supp. 3d --, 2025 U.S. Dist. LEXIS 162859, 2025 WL 2419288, at *3 (W.D. Wash. Aug. 21, 2025) (rejecting government's argument that detention period must be consecutive); *see also Richard Ho*, No. 25-CR-00003 (JAV), 2025 U.S. Dist. LEXIS 178211. Here, Mr. Makuey was detained for 103 days following his order of removal in 2012 and has been in custody for 137 days, 240 days total, as of the date of this response. *See* Dkt.10-8; Dkt. 11, Booth Decl. ¶¶ 6-9; Dkt. 14, Pet. Decl. ¶¶ 41-42. Thus, his total period of confinement exceeds six months and is not presumptively reasonable under *Zadvydas*.

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2. Mr. Makuey's removal is not significantly likely in the reasonably foreseeable future.

Mr. Makuey can also show that there is no "significant likelihood of his removal in the reasonably foreseeable future." *Richard Ho*, No. 25-CR-00003 (JAV), 2025 U.S. Dist. LEXIS 178211, at *6; *see also Zadvydas*, 533 U.S at 701. He is not a citizen of South Sudan and has never lived there. Dkt. 14, Pet. Decl. ¶¶ 1-5. He was born in Pinyudo Refugee Camp in Ethiopia to parents who were citizens of the former country of Sudan, but who lost their nationality in 2011 when South Sudan seceded,[1] and he is therefore stateless. *Id.* Other than his removal order, the government has presented no evidence supporting its contention that Mr. Makuey is a citizen of South Sudan. Mr. Makuey states in his attached declaration that an ICE Officer even told him that he is "not deportable." *Id.* at ¶ 42. According to the government respondent's own evidence, the Declaration of ICE Officer SDDO Brett Booth, when Petitioner was interviewed by the Ethiopian Embassy on May 30, 2012, "the Consul indicated that Ethiopia would not issue a travel document because although Petitioner was born in Ethiopia, his parents were Sudanese, and he is therefore a citizen of Sudan," not a citizen of South Sudan, although Sudan no longer existed at that time.

On July 5, 2025, according to the government's publicly available records,[2] eight individuals (seven of whom were not citizens or nationals of South Sudan) were *unlawfully* removed to South Sudan after the Supreme Court stayed the preliminary injunction issued by the United States District Court for the District of Massachusetts against the Trump Administration's

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[1] https://www.congress.gov/crs_external_products/IF/HTML/IF10218.html.
[2] https://www.dhs.gov/news/2025/07/05/8-barbaric-criminal-illegal-aliens-finally-deported-south-sudan-after-weeks-delays

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efforts to unlawfully remove individuals to third-party countries. *See Department of Homeland Security v. D.V.D.,* 145 S. Ct. 2153, 606 U.S. _ (2025) (summary order); *D.V.D. v. United States Dep't of Homeland Sec.,* 2025 U.S. Dist. LEXIS 74197, 2025 WL 1142968 (Apr. 18, 2025).

Mr. Makuey was detained nine (9) days later. And yet, during the 137 days that have passed since he was re-detained, the government has been unable to secure travel documents for him, nor have they presented a Memorandum of Understanding ("MOU") signed by the United States and South Sudan. Furthermore, the government made no effort to secure a travel document before detaining Mr. Makuey, and waited 102 days, more than three months before even beginning the process of requesting a travel document from South Sudan.

The government, therefore, cannot meet its burden of rebutting Mr. Makuey's showing that his detention is now indefinite, presumptively unreasonable, and thus unlawful. *Zadvydas*, 533 U.S at 701.

B. The *Mathews* factors support Petitioner's contention that the revocation of his OSUP and his re-detention are in violation of his due process rights because he was not afforded a meaningful pre-deprivation process.

The traditional test for evaluating due process claims is set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* test has been found to be applicable "in the immigration detention context." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). At the heart of the *Mathews* test is the fundamental due process requirement that one be given an "opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (*quoting Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Matthews test requires consideration of three distinct factors: 1) The balance private interest that will be affected by the official action; 2) the risk of an erroneous deprivation of such interest in light of the procedural

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safeguards used, or that of any additional ones; and 3) the Government's interest, and the fiscal and administrative burdens that the additional procedural requirement would entail. *Ramirez Tesara,* No. 2:25-cv-01723, 2025 U.S. Dist. LEXIS 179205, at *11.

1. Mr. Makuey has a significant private interest in his freedom.

As this Court and others have repeatedly held, when Mr. Makuey was released from his initial detention on OSUP in 2012, he "took with him a liberty interest which is entitled to the full protections of the due process clause." *Id.* at *8 (*citing Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, _ F.Supp.3d _, 2025 U.S. Dist. LEXIS 37929, 2025 WL 691664, at *5 (E.D. Cal. Mar. 3, 2025)("The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.")); *see also, e.g., G.S.*, No. 2:25-cv-01255-JNW-TLF, 2025 U.S. Dist. LEXIS 214975, at *15-16; *Ortega v. Bonnar,* 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 U.S. Dist. LEXIS 82538, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 U.S. Dist. LEXIS 156336, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

2. The risk of erroneous deprivation is high.

"Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Zadvydas*, 533 U.S. at 701. Regardless of whether "the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *E.A. T.-B*, 2025 U.S. Dist. LEXIS 160809, 2025 WL 2402130, at *4 (internal citation omitted*); see also Ramirez Tesara,* No. 2:25-cv-01723-MJP-TLF, 2025 U.S. Dist. LEXIS 179205, 2025 WL 2637663, at *4

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(internal citation omitted); *Francois*, No. C25-2122-RSM-GJL, 2025 U.S. Dist. LEXIS 216262, at *13. Additionally, "re-detention must still 'bear[] [a] reasonable relation' to a valid government purpose—here, preventing flight or protecting the community from dangerous individuals." *Id.* at *12 (*quoting Zadvydas,* 533 U.S. at 690).

The government respondent incorrectly argues that ICE complied with the OSUP revocation procedures set forth under 8 C.F.R. § 241.13(i) ("Determination of whether there is a significant likelihood a detained alien in the reasonably foreseeable future") and under 8 C.F.R. § 241.4(l) ("Continued detention of inadmissible, criminal, and other aliens beyond the removal period"), and that in so doing, their re-detention of the Petitioner comported with due process, as the procedures set forth in the applicable regulations are constitutionally sufficient. Dkt, 9, Resp. Ret., at 12-14. ICE's re-detention of the petitioner, however, was devoid of substantive due process and the procedural due process safeguards are woefully inadequate.

a. When the government respondents re-detained Mr. Makuey, they were fully aware that he is stateless and that his removal is not significantly likely in the reasonably foreseeable future, and that his re-detention serves no lawful purpose.

First and foremost, there has never been, and it is unlikely there ever will be, a "significant likelihood of removing" Mr. Makuey "in the reasonably foreseeable future." 8 C.F.R. § 241.13(i). He is stateless. As noted above, ICE was unable to secure a travel document from South Sudan for Mr. Makuey in 2012, nor were they able (and/or made no effort) to secure one during the 13 years between Mr. Makuey's release and re-detention on July 14, 2025, and they waited 102 days after he was detained before even beginning the process of requesting a travel document from South Sudan. Mr. Makuey has now been detained 137 days, and the government has been unable to secure travel documents for him from South Sudan, nor have

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they presented a Memorandum of Understanding ("MOU") signed by the United States and South Sudan.

Thus, Mr. Makuey's removal is not "reasonably foreseeable," and his detention, fundamentally, does not serve any lawful purpose, regardless of the procedures used to re-detain him.

b. The re-detention procedures used to re-detain Mr. Makuey are constitutionally insufficient.

Mr. Makuey was given no meaningful notice of the revocation, nor any meaningful opportunity to respond or to submit any evidence, but was instead, detained immediately upon receiving the revocation notification. Dkt. 9, Resp. Ret., at 6-7. By the government's own admission, he was not afforded the benefit of a hearing, only an "informal interview" that consisted of the officer who was in the process of detaining him asking him of he had "anything to say." *Id.*; *see also* Dkt. 14, Pet. Decl. at ¶¶ 41-42. Due process requires far more.

If Mr. Makuey had received notice of the basis for his re-detention in advance rather than while already in the custody of ICE and had had a re-detention hearing with a meaningful opportunity to be heard and to present evidence before a neutral decisionmaker prior to his arrest, "it is undeniable that the risk of an erroneous deprivation would decrease." *Francois*, 2025 U.S. Dist. LEXIS 216262, at *13 (*quoting Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sep. 17, 2025)).

Furthermore, if Mr. Makuey had been afforded these basic due process protections, the evidence would have shown: 1) that none of his circumstances had changed since he checked with ICE in May 2024, and he is more a danger to the community now than he was then, and is, instead, an exemplary model of rehabilitation with tremendous community support; and 2) that

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his history of compliance with ICE reporting requirements indicates that he is not a flight risk. Dkt. 14, Pet. Decl. *generally*, and at ¶¶ 14, 20, 28, 41.

At the time of the revocation of his OSUP on July 14, 2025, Mr. Makuey had been clean and sober, with no additional criminal arrests, for the past seven (7) years since June 23, 2018, and has had no criminal convictions since 2019. *Id.*; *see also* Dkts. 13-1, 13-2, 13-4 (Pet. Exhs. 1-3; letters of support, collectively). He is financially self-sufficient and employed with Urban Alchemy assisting unhoused individuals secure housing in Portland, Oregon. *Id.* He had taken on a stepparent role for his USC partner's six-year-old daughter during the past year, and the couple is expecting their first child together on December 9, 2025, and plan to marry in the future. *Id.*

Additionally, when Mr. Makuey was released in 2012, and again in both 2014 and in 2024 when his OSUP was twice renewed by ICE, he necessarily satisfied the Government that he "would not pose a danger to property or persons, and that [he would be] likely to appear for any future proceeding." *See* 8 C.F.R. § 1236.1(c)(8). While Mr. Makuey has multiple criminal arrests and convictions between 2012 and 2018, the Government's failure to show a change in circumstances between Mr. Makuey's last OSUP renewal in May 2024 and July 2025 when he was re-detained also shows that there is a "significant risk of an erroneous deprivation of his liberty interest through the procedures used." *Dejesus v. Bostock*, No. 25-cv-01427-JHC-TLF, 2025 U.S. Dist. LEXIS 230827, at *8-9 (W.D. Wash. Nov. 24, 2025) (internal citation omitted); *see also E.A. T.-B.*, 2025 WL 2402130, at *5.

3. The Government has failed to show that its interest in re-detaining the Petitioner without procedural safeguards outweighs the minimal administrative and financial burden it would incur by holding a pre-detention hearing.

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The government Respondent argues that it has an interest in "enforcing compliance with its orders of release and returning individuals to custody who violate their terms" and "put[] public safety at risk," and that it also has "a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our laws.'" Dkt. 9, Resp. Ret., at 13-14 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (*quoting Demore v. Kim*, 538 U.S. 510, 518 (2003)).

The government's claim that they re-detained Mr. Makuey because he "put[] public safety at risk" does not appear to be a facially valid claim because, as noted above, they deemed him not to be a public safety risk in May 2024 when they renewed his OSUP, allowing him to remain free from detention for the next 14 months until his next scheduled ICE check-in on July 14, 2025. The government appears to be falsely implying that Mr. Makuey "remains in the United States in violation of our laws." However, that is factually inaccurate. He remains in the U.S. because he is stateless and therefore cannot be removed.

Lastly, the government has not shown, or made any argument, that providing a pre-detention hearing and additional procedures would impose any significant burdens on them, financially or otherwise.

CONCLUSION

For the foregoing reasons, Petitioner has satisfied his burden of establishing that he is entitled to the relief sought, and the petition should be granted, and petitioner's immediate release ordered.

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Dated: November 28, 2025.

Respectfully submitted,

s/ Minda A. Thorward

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I certify that this memorandum contains 3,116 words, in compliance with the Local Civil Rules.