

District Judge Jamal N. Whitehead  
Magistrate Judge Michelle L. Peterson

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

MICHAEL TESSEMA,

Petitioner,

v.

PAMELA BONDI, *et al.*,

Respondents.

Case No. 2:25-cv-02330-JNW-MLP

FEDERAL RESPONDENTS'<sup>1</sup>  
RETURN MEMORANDUM

Noted for Consideration:  
December 9, 2025

**I. INTRODCUTION**

U.S. Immigration and Customs Enforcement (“ICE”) has lawfully detained Petitioner Michael Tessema, who is subject to a final removal order, to facilitate his removal from the United States. ICE revoked Petitioner’s previously issued Order of Supervision, in accordance with the Immigration and Nationality Act (“INA”) and its controlling regulations. In doing so, ICE gave Petitioner notice and an opportunity to be heard, consistent with due process. Petitioner is lawfully detained under Section 241 of the INA. *See* 8 U.S.C. § 1231. His detention is not indefinite under

<sup>1</sup> Respondent Bruce Scott is not a Federal Respondent.  
FEDERAL RESPONDENTS’ RETURN MEMORANDUM  
[Case No. 2:25-cv-02330-JNW-MLP] - 1

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1 *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), and his request for release from detention should be  
2 denied.

## 3 II. BACKGROUND

### 4 A. Post-order detention authority

5 The INA governs the detention and release of noncitizens during and following their  
6 removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general  
7 detention periods are generally referred to as “pre-order” (meaning before the entry of a final order  
8 of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal).  
9 *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order  
10 detention).

11 When a final order of removal has been entered, a noncitizen enters a 90-day “removal  
12 period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security  
13 “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for  
14 removal and to protect the community from noncitizens who may present a danger, Congress has  
15 mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2).

16 Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration  
17 of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention  
18 and does not place any temporal limit on the length of detention under that provision:

19 [A noncitizen] ordered removed who is inadmissible under section 1182,  
20 removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or  
21 who has been determined by the [the Secretary of Homeland Security] to be a risk  
22 to the community or unlikely to comply with the order of removal, *may* be detained  
23 *beyond the removal period* and, if released, shall be subject to the terms of  
24 supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

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1 During the removal period, ICE is charged with attempting to effect removal of a  
2 noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time  
3 limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen  
4 may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal  
5 from the United States.” *Zadvydas*, 533 U.S. at 689. It was further specified that Section  
6 1231(a)(6) does not permit indefinite detention. *Id.* Thus, “once removal is no longer reasonably  
7 foreseeable, continued detention is no longer authorized by statute.” *Id.*, at 699.

8 The *Zadvydas* Court recognized that as the length of post-order detention grows, a sliding  
9 scale of burdens is applied to assess the continuing lawfulness of a noncitizen’s post-order  
10 detention. *Id.*, at 701 (stating that “for detention to remain reasonable, as the period of post-  
11 removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would  
12 have to shrink”). However, the Supreme Court determined that it is “presumptively reasonable”  
13 for the Government to detain a noncitizen for six months following entry of a final removal order,  
14 while it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme  
15 Court implicitly recognized that six months is the *earliest* point at which a noncitizens’ detention  
16 could raise constitutional issues. *Id.*

17 **B. OSUP and Revocation**

18 Once it is determined that there is no significant likelihood of removal in the reasonably  
19 foreseeable future, DHS may release noncitizens on an Order of Supervision (“OSUP”). 8 C.F.R.  
20 § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is  
21 governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen “violates  
22 any of the conditions of release,” *id.*, §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined “that  
23 there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.”  
24 *Id.*, § 241.13(i)(2).

1 Whether there is a significant likelihood that the alien may be removed in the reasonably  
2 foreseeable future is determined by assessing a series of factors, including “the history of the alien’s  
3 efforts to comply with the order of removal, the history of the Service’s efforts to remove aliens to  
4 the country in question or to third countries ... and the views of the Department of State regarding  
5 the prospects for removal of aliens to the country or countries in question.” *Id.*, § 241.13(f).  
6 Alternatively, certain designated officials may also revoke an OSUP as an act of discretion when  
7 revocation is in the public interest. *Id.* § 241.4(l)(2).

8 Section 241.13(i)(3) provides that upon revocation, the alien “will be notified of the reasons  
9 for revocation of his or her release” and will receive an “initial informal interview promptly” after  
10 being detained, to “afford the alien an opportunity to respond to the reasons for revocation stated  
11 in the notification.” *Id.*, § 241.13(i)(3). During such an interview, the noncitizen “may submit  
12 any evidence or information that he or she believes shows there is no significant likelihood he or  
13 she be removed in the reasonably foreseeable future, or that he or she has not violated the order of  
14 supervision.” *Id.* “The revocation custody review will include an evaluation of any contested facts  
15 relevant to the revocation and a determination whether the facts as determined warrant revocation  
16 and further denial of release.” *Id.* Then, if the alien’s request for release is denied, he or she “may  
17 submit a request for review of his or her detention . . . six months after [DHS’s] last denial of  
18 release[.]” *Id.*, § 241.13(j).

19 **C. Petitioner Michael Tessema<sup>2</sup>**

20 Petitioner is a citizen of Eritrea who was born in Ethiopia. Lambert Decl., Ex. A, Form I-  
21 213, at 3. He applied for admission at the Brownsville, Texas port of entry on January 10, 2015,  
22 but lacked any documents which allowed him to enter the United States. Melendez Diaz Decl.,  
23

24 <sup>2</sup> Undersigned counsel did not receive the A-File prior to filing this Return.

1 ¶ 4. Initially, he was placed in expedited removal proceedings, but later he was issued notice to  
2 appear, placing him into full removal proceedings. *Id.*, ¶ 5. On April 3, 2015, an immigration  
3 judge ordered Petitioner removed to Eritrea. Lambert Decl., Ex. B, Order of the Immigration  
4 Judge. He remained detained throughout the proceedings. Melendez Diaz Decl., ¶ 5.

5 Due to its inability to remove Petitioner, ICE released Petitioner on an OSUP on February  
6 2, 2016. Lambert Decl., Ex. C, Release Notification.

7 In September 2025, ICE Detention and Deportation Officer Jaspal decided to revoke  
8 Petitioner's OSUP because it had been determined that Petitioner could be expeditiously removed  
9 from the United States. Lambert Decl., Ex. D, Notification of Revocation of Release. On October  
10 17, 2025, ICE took custody of Petitioner when he reported to a U.S. Citizenship and Immigration  
11 Services ("USCIS") office and served him with notice that his OSUP had been revoked. Lambert  
12 Decl., Ex. A; Ex. D; Ex. E, Warrant for Arrest. ICE also conducted an informal interview of  
13 Petitioner to afford him an opportunity to respond to the reasons for revocation of his OSUP.  
14 Lambert Ex. F, Alien Informal Interview. ICE determined that Petitioner would remain in custody.  
15 Lambert Decl., Ex. G, Notice of Custody Determination. He is currently detained at the Northwest  
16 ICE Processing Center.

17 ICE intends to interview Petitioner and attempt to obtain a travel document for his removal  
18 to Eritrea. Melendez Diaz Decl., ¶ 10.

### 19 III. LEGAL STANDARD

20 Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas  
21 petitions. To warrant a grant of habeas corpus, the petitioner must demonstrate that his or her  
22 custody is in violation of the Constitution, laws, or treaties of the United States. See 28 U.S.C. §  
23 2241(c)(3).

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#### IV. ARGUMENT

Petitioner challenges his detention based on allegations that his OSUP was revoked in violation of the Due Process Clause of the Fifth Amendment. Pet., ¶¶ 43-51. However, Petitioner's OSUP revocation complied with the relevant regulations and comports with due process.

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

##### A. Petitioner's liberty interest in remaining released on conditions is reduced.

Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at \*11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not mean that he possesses a separate or heightened liberty interest in the continuation of his conditional release on OSUP.<sup>3</sup> The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has "firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting *Demore v. Kim*, 538 U.S. 510, 522 (2003)).

<sup>3</sup> Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

1 As the Supreme Court has explained, “[i]n the exercise of its broad power over naturalization and  
2 immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.”  
3 *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976).

4 **B. The existing procedures for OSUP revocation are constitutionally sufficient and**  
5 **Petitioner’s detention does not violate ICE’s regulations.**

6 Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation  
7 of Petitioner’s liberty here is minimal, and ICE has complied with all procedural safeguards in this  
8 case. Petitioner claims that the agency failed to give him both “adequate” notice and an  
9 opportunity to be heard regarding his OSUP revocation. Pet., ¶ 3. This is inaccurate.

10 As outlined above, DHS established a clear statutory framework in 8 C.F.R. § 241.13(i)  
11 that sets forth the requirements and process for affecting an OSUP revocation. When ICE  
12 determines that there is a “significant likelihood” an alien can be removed from the United States  
13 within the “reasonably foreseeable future,” ICE is clearly permitted to revoke the OSUP and take  
14 the alien into custody. Nothing else is required for revocation under these circumstances. *Id.*, §  
15 241.13(i)(1) and (2); *see also Nizar Esmail v. Noem, et al.*, 2025 WL 3030590, at \*2 (C.D. Cal.  
16 Sept. 12, 2025).<sup>4</sup>

17 Section 241.13(i)(3) further outlines the OSUP revocation procedures and provides that  
18 “upon revocation,” i.e., not before revocation, “the alien will be notified of the reasons for the  
19 revocation” and to conduct an “initial interview promptly *after* his or return to Service custody to  
20 afford the alien an opportunity to respond to the reasons for revocation stated in the notification.”  
21 *Id.*, § 241.13(3). These are precisely the procedures ICE followed when the agency revoked  
22 Petitioner’s OSUP.

23  
24 <sup>4</sup>While ICE may also revoke an OSUP as an act of discretion if revocation is in the public interest, pursuant to 8  
C.F.R. § 241.4(i)(2), this is not what ICE has chosen to do in this case.

1 Here, ICE properly took custody of Petitioner based on its determination that Petitioner  
2 could be removed expeditiously. Lambert Decl., Ex. D. Upon revocation, ICE provided Petitioner  
3 with written notice of the reason for its determination. *Id.* That same day, ICE conducted an  
4 informal interview with Petitioner, giving him an opportunity to respond to ICE’s determination.  
5 Lambert Decl., Ex. F. At that interview, Petitioner responded to the revocation. *Id.* Accordingly,  
6 Petitioner’s unevicenced contentions that he was detained without cause, notice, and an  
7 opportunity to respond are simply incorrect. In revoking Petitioner’s OSUP, ICE adhered to the  
8 requirements outline in 8 C.F.R. § 241.13(i), consistent with foundational principals of procedural  
9 due process. *Mathews*, 424 U.S. at 333.

10 **C. The Government has a strong interest in returning aliens subject to executable**  
11 **removal orders to custody.**

12 Turning to the third *Mathews* factor, the Ninth Circuit has emphasized that the *Mathews*  
13 test “must account for the heightened government interest in the immigration detention context.”  
14 *Rodriguez Diaz*, 53 F.4th at 1206. Invoking the Supreme Court’s 2003 *Demore* decision, the Ninth  
15 Circuit in *Rodriguez Diaz* recognized that “the government clearly has a strong interest in  
16 preventing aliens from ‘remain[ing] in the United States in violation of our law.’” *Rodriguez Diaz*,  
17 53 F.4th at 1208 (quoting *Demore*, 538 U.S. at 518). Petitioner was ordered removed over a decade  
18 ago. ICE is in possession of Petitioner’s birth certificate and is attempting to obtain documents to  
19 remove Petitioner to Eritrea. Melendez Diaz Decl., ¶¶ 10-11.

20 In sum, the three *Mathews* factors demonstrate that Petitioner’s detention comports with  
21 procedural due process and that ICE adhered to its own regulations in revoking Petitioner’s OSUP.

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V. CONCLUSION

For the foregoing reasons, Petitioner has not satisfied his burden of establishing entitlement to relief and the petition should be denied.

DATED this 5th day of December, 2025.

Respectfully submitted,

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s/ Michelle R. Lambert

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*Attorneys for Federal Respondents*

*I certify that this memorandum contains 2,253 words, in compliance with the Local Civil Rules.*