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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

DEEPAK MALIK,

Petitioner,

vs.

SHIKHA DOSANJ, Warden, Federal Detention Center, Honolulu, Hawaii; POLLY KAISER, in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, San Francisco Field Office; KRISTI NOEM, in her official capacity as the Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

CASE NO. CV26-00060 MWJS-WRP

RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS [ECF No. 1]; DECLARATION OF JAMES TERRY DOLD; EXHIBITS "A"-"C"; CERTIFICATE OF SERVICE

RESPONDENTS' RETURN TO
PETITION FOR WRIT OF HABEAS CORPUS [ECF NO. 1]

I. INTRODUCTION

Respondents hereby oppose the Petition in this 28 U.S.C. § 2241 habeas proceeding.[1] Petitioner DEEPAK MALIK ("Petitioner") has not provided a sufficient basis to show that his removal is not likely in the reasonably foreseeable future and the Petition should be denied. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

II. BACKGROUND

Petitioner is a native and citizen of the Republic of India. Declaration of James Terry Dold ("Dold Dec.") at ¶ 6. He was initially arrested by U.S. Customs and Border Patrol ("CBP") officers on or about March 15, 2023, after officers determined he had entered the United States unlawfully. *Id.* at ¶ 7. CBP recognized that Petitioner was an alien subject to a Final Order of Removal, but

[1] Respondents move to strike and to dismiss all respondents other than Shikha Dosanj from this case. A petitioner seeking *habeas corpus* relief may only name the officer having custody of him as the respondent. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

declined to serve him with a Notice of Intent to Reinstate a Final Order of Removal at that time. *Id.* Instead, the next day CBP served him with a Notice of Intent to Reinstate a Final Order of Removal and a Warning to Alien Ordered Removed or Deported. *Id.* at ¶8; Ex. A. Petitioner was released from custody on March 19, 2023. Dold Dec. at ¶8.

Petitioner was arrested on May 13, 2025 in Fresno, California and served with a Notice of Intent to Reinstate a Final Order of Removal and referred to United States Citizenship and Immigration Services ("USCIS") pursuant to INA 241(a)(5) to be interviewed so USCIS could determine if he had a reasonable fear of persecution, should he be removed. *Id.* at ¶ 9; Ex. B. USCIS issued a negative reasonable fear finding in Petitioner's case. Dold Dec. at ¶ 10. Petitioner requested that an immigration judge review USCIS's determination and the Immigration Judge vacated the decision and placed Petitioner in withholding-only proceedings via a Form I-863, Notice of Referral to Immigration Judge. *Id. at* ¶¶ 10-11; Ex. C.

On October 1, 2025, an Immigration Judge ordered that Petitioner be removed to the Republic of India; that removal was withheld pursuant to Section 241(b)(3) of the INA. Dold Dec. at ¶ 12. That removal order became final on October 31, 2025. *Id.* at ¶13.

Petitioner is in post-removal detainment pursuant to Section 241(a)(6) of the INA. *Id.* at ¶ 14. DHS is actively working with the Department of State to identify a third country of removal for Petitioner. *Id.* at ¶15. Should Petitioner be removed to any country other than India, he will be provided notice, have an opportunity to claim fear, and to have that claim adjudicated. *Id.* at ¶16.

III. THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE DENIED.

A. Petitioner Failed to Establish That He is Entitled to Release From Detention.

1. Detention following a Final Order of Removal

When an alien becomes subject to a final removal order, 8 U.S.C. § 1231(a)(2) provides that the government "shall" detain the alien during a 90-day removal period. 8 U.S.C. § 1231(a)(2). After the removal period ends, the government "may" detain four categories of aliens: (1) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (2) those who are removable on certain specified grounds, including 8 U.S.C. § 1227, including felony convictions; (3) those who immigration authorities have determined "to be a risk to the community"; and (4) those immigration authorities have determined to be "unlikely to comply with the order of removal." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578–79 (2022) (quoting 8 U.S.C. § 1231(a)(6)).

In *Arteaga-Martinez*, the Supreme Court held that 8 U.S.C. § 1231(a)(6)

does not require a bond hearing before an Immigration Judge after six months of detention in which the government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community. *Arteaga-Martinez*, 596 U.S. at 580–81. In *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001), however, the Supreme Court held that section 1231(a)(6) "does not permit indefinite detention" and instead "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. The Supreme Court stated that, after six months of detention, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the government must respond with evidence sufficient to rebut that showing. *Id.* at 701. The Court was careful to note, however, that: "This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

When the post removal detention has not exceeded six months, the petitioner has a much higher burden as "the detainee must prove the unreasonableness of detention and courts must accord great deference to Executive Branch determination based on foreign policy expertise and necessity." *Sweid v. Cantu,*

2025 WL 3033655 (D. Ariz. October 30, 2025) at *4.

2. Re-detention is permitted to effectuate removal

The applicable regulations also expressly permit the re-detention of an alien like Petitioner for the purpose of effectuating his removal. The regulations provide that supervised release can be revoked for one of two reasons: (1) for a "violation of the conditions of release" or (2) for "revocation for removal". 8 C.F.R. §§ 241.13(i)(1), (2) ("Revocation of Release"). Specifically, any alien "may be continued in detention for an additional six months in order to effect the alien's removal." 8 C.F.R. § 241.13(i)(1). In addition, "[t]the Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

If an alien is detained, the governing regulation provides, in pertinent part, that an alien will not be released from custody, if in the judgment of the Service travel documents can be obtained or are forthcoming. *See* 8 C.F.R. § 241.4(g)(2), (3). Section 241.4(g)(2) provides: "In general. The district director shall continue to undertake appropriate steps to secure travel documents for the alien both before and after the expiration of the removal period. . . . The Service's determination that receipt of a travel document is likely may by itself warrant continuation of

detention pending the removal of an alien from the United States." 8 C.F.R. § 241.4(g)(2). If it is established at any stage of the custody review that, in the judgment of the Service, travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3). Finally, to consider release, the relevant decisionmaker must conclude that travel documents are available for the alien. 8 C.F.R. § 241.4(e).

In this case, it is undisputed that less than six months have elapsed since the final order of removal was entered (the final order of removal was issued on October 31, 2025). Dold Dec. at ¶ 13. Further, Petitioner has not presented any facts to prove that his removal to a third country is not reasonably foreseeable. Rather, Petitioners make conclusory arguments that Immigration and Customs Enforcement (ICE) will not be able to remove Petitioner to a third country and that unidentified "similarly situated" individuals received "negative responses" from alternative removal countries. ECF No. 1 at ¶¶45-49. To the contrary, ICE is actively working with the Department of State to identify a third country for removal for Petitioner. Dold Dec. at ¶15.

Based on the deference that must be given to Executive Branch determinations based on foreign policy expertise and administrative necessity, Petitioner has failed to carry his burden to prove that his removal is not reasonably

foreseeable and this Petition must be denied.

B. Due Process Does Not Require Petitioner's Release From Detention.

Petitioner's re-detention is not proscribed by the Due Process Clause. Although the Fifth Amendment entitles aliens to due process of law, the Ninth Circuit interprets the Due Process Clause "consistent with longstanding precedent recognizing that the process due aliens must account for the government's countervailing interests in immigration enforcement – considerations that do not apply to U.S. citizens." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205–06 (9th Cir. 2022). It is well-established that "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 522 (2003).

Assuming the factors set forth in *Mathews v. Eldridge* apply in this context to determine whether procedural protections satisfy the Due Process Clause,[2] the Court considers the following the three factors: (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 the probable value, if any, of additional or substitute procedural safeguards; (3) the Government's interest, including the

[2] The Supreme Court when confronted with constitutional challenges to immigration detention has not resolved them through express application of *Mathews*. *Rodriguez Diaz*, 53 F.4th at 1206 (9th Cir. 2022) (citing Supreme Court cases).

function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *Mathews* is not a bright-line test, but a flexible standard that must account for the heightened governmental interest in the immigration detention context. *Rodriguez-Diaz* at 53 F.4th at 1206–07.

The first factor favors Respondents because Petitioner's liberty interest in his supervised release is low. From the outset, his supervision was in place only until he could be removed from the United States. *See Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011), *abrogated on other grounds*. Petitioner's diminished interest in this context weighs against imposing the hearing requirement or release.

The second *Mathews* factor also favors Respondents. In the context of an alien with a final (withholding only) removal order, the risk of erroneous deprivation is relatively low. Here, Petitioner is undisputedly subject to a final order of removal, Petitioner has no pending applications that would prevent his removal, § 1231(a)(6) undisputedly authorizes Petitioner's detention in order to effectuate his removal order.

The final factor weighs decisively in Respondents' favor. The government has a strong interest in preventing aliens from remaining in the United States in violation of our law and, to this end, effectuating a final order of removal as

expeditiously as possible. *See Rodriguez Diaz*, 53 F.4th at 1208. District courts cannot provide injunctive relief to forestall removal via habeas cases and the courts should not do indirectly what it is prohibited from doing directly. *See Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022). On balance, the *Mathews* factors weigh decisively in Respondents' favor.

C. Petitioner Is Not Entitled to Relief Under the APA.

To the extent Petitioner fashions his claims under the Administrative Procedures Act (APA), they should be denied. See ECF No. 1 ¶¶75-78. As discussed above, his detention is permitted by statute and regulation, and Petitioner has been afforded all the process required by the regulations. Thus, there is no basis to declare his re-detention arbitrary or contrary to law or regulation.

In addition, this case should not be reviewed under the APA in the first instance. The APA provides for judicial review only of agency actions "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Here, because a writ of habeas corpus provides Petitioner with an adequate remedy to his detention challenge, suit under the APA is expressly precluded. "Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action," *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988). Habeas corpus, the "symbol and guardian of individual liberty," *Peyton v. Rowe*, 391 U.S. 54, 59 (1968), has long provided such a remedy, and Petitioner cannot dispute that

such an adequate remedy exists for him to challenge his detention here. Thus, Petitioner's claim under the APA must fail.

IV. CONCLUSION

Based on the foregoing, Respondents respectfully request that this Honorable Court deny the Petition.

DATED: February 24, 2026, at Honolulu, Hawaii.

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/s/ *Joseph M. McGinley*
By_____
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CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

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DATED: February 24, 2026, at Honolulu, Hawaii.

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