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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RAHUL RAHUL,

Petitioner,

vs.

SHIKHA DOSANJ, in her official capacity as Warden of the 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 Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

CASE NO. CV26-00067 SASP-RT

RESPONDENTS' RESPONSE TO
PETITION FOR WRIT OF HABEAS
CORPUS [ECF No. 1];
DECLARATION OF EMILIO
ORTEGON, JR.; CERTIFICATE OF
SERVICE

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

I. INTRODUCTION

Respondents SHIKHA DOSANJ, in her official capacity as Warden of the 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 Secretary of the Department of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the United States hereby oppose the Petition in this 28 U.S.C. § 2241 habeas proceeding.¹ Petitioner RAHUL RAHUL (“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 who entered the United States on or about August 29, 2024. Declaration of Emilio Ortegon, Jr. (“Ortegon Dec.”) at ¶6, ECF No. 1 at ¶2 . On or about August 30, 2024, Petitioner

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).

was arrested by the U.S. Border Patrol after agents determined that Petitioner unlawfully entered the United States and Petitioner was served with a Form I-860, Notice and Order of Expedited Removal, pursuant to Immigration and Nationality Act (INA) section 212(a)(7)(A)(i)(I). Ortegon Dec. at ¶¶7 to 8. On August 31, 2024, Petitioner was detained by Immigration and Customs Enforcement (ICE). *Id.* at ¶9. On October 9, 2024, Petitioner was paroled from ICE custody pursuant to INA section 212(d)(5)(A). *Id.* at ¶10.

On November 7, 2024, Petitioner was taken into custody. *Id.* at ¶12; ECF No. 1 at ¶ 4. On December 5, 2024, Petitioner's claim that he was afraid to return to the Republic of India was referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear interview. Ortegon Dec. at ¶14.

On December 31, 2024, USCIS issued Petitioner a Form I-862, Notice to Appear, charging removability under section 212(a)(7)(A)(i)(I) of the INA, as an immigrant who was not in possession of a valid immigrant visa and under section 212(a)(6)(A)(i) of the INA, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* at ¶15. On June 7, 2025, Petitioner was transferred to the Honolulu Federal Detention Center. *Id.* at ¶17.

On October 27, 2025, an immigration judge ordered that Petitioner be removed to the Republic of India, granted Petitioner withholding of removal Pursuant to INA 241(b)(3) and entered a final order of removal. *Id.* at ¶¶ 18; ECF No. 1 at ¶¶6-7; ECF No. 1-2, Page ID. 53-56.

On October 27, 2025, ICE served Petitioner a Form I-229a, Warning for Failure to Depart, and a Notice of Custody Review. Ortegon Dec. at ¶ 19. On February 3, 2026, an immigration judge denied Petitioner’s request for a bond redetermination and Petitioner reserved appeal. *Id.* at ¶20.

Petitioner is in post-removal detainment pursuant to INA 241(a). Ortegon Dec. at ¶ 21, ECF No. 1 at ¶ 7. DHS is actively working with the Department of State to identify a third country of removal for Petitioner. Ortegon Dec. at ¶ 22. Should Petitioner be removed to any country other than the Republic of India, he will be provided notice, have an opportunity to claim fear, and to have that claim adjudicated. *Id.* at ¶ 23.

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]he 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). *Ortegon Dec.* at ¶18. 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 ¶¶41-47. To the contrary, ICE is actively working with the Department of State to identify a third country for removal for Petitioner. Ortegon Dec. at ¶23.

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 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.

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).

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 27, 2026, at Honolulu, Hawaii.

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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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