Magistrate Judge S. Kate Vaughan

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

NEBIL KEDIR GEBI, Petitioner, v. BRUCE SCOTT, *et al.*,[1] Respondents.	Case No. 2:26-cv-00755-SKV FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for consideration: March 25, 2026

I. INTRODUCTION

This Court should deny Petitioner Nebil Kedir Gebi's Petition for Writ of Habeas Corpus. *See* Dkt. 1 ("Pet."). Petitioner is a noncitizen subject to an order of removal that became final on September 28, 2023. U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner under 8 U.S.C. § 1231(a)(6) after the revocation of his Order of Supervision ("OSUP") previously issued by the U.S. Department of Homeland Security ("DHS"). Petitioner challenges his re-detention as violative of his right to procedural due process and his post-order detention at

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office. Federal Respondents also substitute Julio Hernandez for Laura Hermosillo pursuant to Federal Rule of Civil Procedure 25(d).

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the Northwest ICE Processing Center ("NWIPC") while he awaits removal as unlawful under *Zadvydas v. Davis*, 533 U.S. 678, 689-701 (2001).

Petitioner's request should be denied because his detention is consistent with statute and the standards articulated by the Supreme Court in *Zadvydas*. *See id.* Congress has authorized post-order detention to effectuate removal, and the Supreme Court has held that such detention is lawful so long as removal remains reasonably foreseeable. *Id.* at 701. Petitioner's detention has not crossed the threshold into impermissibly indefinite confinement because his removal to Ethiopia is reasonably foreseeable, and his assertions to the contrary fail to demonstrate that there is "good reason" to conclude otherwise. *Id.* On February 6, 2025, Enforcement and Removal Operations ("ERO") obtained a valid travel document, specifically a laissez-passer, in Petitioner's name.[2]

Petitioner's remaining claims are purely conjectural, resting entirely on speculation about possible future third country removal despite no evidence to suggest ERO is pursuing third country removal in this case. Such contingent injuries fail to establish Article III standing or entitlement to permanent injunctive relief. Further, because Petitioner's request for injunctive relief conditionally barring re-detention imposes requirements that directly conflict with statute, his request for such relief should be denied.

Accordingly, Federal Respondents respectfully request that the Petition be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The Immigration and Nationality Act ("INA") governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594

[2] *See Laissez-Passer*, Embassy of Ethiopia, Washington D.C., https://ethiopianembassy.org/laissez-passer/ (last visited March 20, 2026).

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U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the 90-day removal period if necessary to effectuate removal. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

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

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

Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has construed this provision to authorize detention only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701. The *Zadvydas* Court recognized that as the length of detention grows, a sliding scale of burdens is applied to assess the continuing lawfulness of a noncitizen's post-order detention. *Id.* (stating that "for detention to remain reasonable, as the period of post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink"). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's post-order detention could raise constitutional issues. *Id.*

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Beyond six months, continued detention is permissible so long as there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* at 701; *see also Clark v. Martinez*, 543 U.S. 371, 378 (2005) (extending *Zadvydas* to inadmissible noncitizens). The "reasonably foreseeable future" is evaluated based on concrete evidence of progress, such as diplomatic communications, travel document requests, or interviews with the home country. *Zadvydas*, 533 U.S. at 701. The noncitizen bears the initial burden to show "good reason" that removal is unlikely, after which the government must rebut with evidence of likely removal. *Id.*

If it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, DHS may release noncitizens on an OSUP. 8 C.F.R. § 241.13(h). The right to remain under an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13 and 241.4(l).

B. Third Country Removal

The INA and implementing regulations set forth the process for determining the country of removal. *See* 8 U.S.C. §§ 1231(b)(2)(C)-(E); 8 C.F.R. § 1240.10(f); *see also Jama v. ICE*, 543 U.S. 335, 341 (2005). A noncitizen may be removed to (in order of priority): (1) a country designated by the noncitizen; (2) a country where the noncitizen is a subject, national, or citizen; or (3) a country where the noncitizen has a lesser connection. 8 U.S.C. § 1231(b)(2). If these options are "impracticable, inadvisable, or impossible," the noncitizen may be removed "to another country whose government will accept" him. *Id.* at § 1231(b)(2)(E)(vii); *Jama*, 543 U.S. at 341.[3]

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[3] The Government is prohibited from removing a person to a third country where they may be persecuted or tortured, a form of protection known as withholding of removal. *See* 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16. Similarly, the Government cannot remove a person to a country where they would be tortured, a form of protection known as protection under the Convention Against Torture ("CAT"). *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Public Law 105–277, div. G, sec. 2242, 112 Stat. 2681, 2631–822 (8 U.S.C. § 1231 note); 28 C.F.R. §§ 200.1, 208.16–208.18, 1208.16-1208.18.

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C. Petitioner Nebil Kedir Gebi[4]

Petitioner is a native and citizen of Ethiopia who entered the United States without inspection or parole on or about March 5, 2023, at or near San Ysidro, California. *See* Declaration of Barbara Andrade ("Andrade Decl."), Ex. B, Notice to Appear ("NTA"). On March 6, 2023, DHS determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) of the INA and issued a Notice and Order of Expedited Removal under § 1225(b)(1). *See* Declaration of Deportation Officer Karl Douglas ("Douglas Decl."), ¶ 5; Andrade Decl., Ex. A (Notice and Order of Expedited Removal).

On March 9, 2023, Petitioner was transferred to ICE custody. Douglas Decl., ¶ 6. After expressing a fear of removal to Ethiopia, ICE referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for a credible fear interview, which was held in March 2023. Douglas Decl., ¶ 7. USCIS determined Petitioner had presented a credible fear of persecution in Ethiopia, and on March 22, 2023, DHS issued an NTA charging Petitioner as inadmissible under both 8 U.S.C. §§ 1182(a)(6)(A)(i), and 1182(a)(9)(A)(i)(I). Andrade Decl., Ex. B (NTA); Douglas Decl., ¶ 8.

On September 28, 2023, an immigration judge denied Petitioner's applications for relief from removal. Douglas Decl., ¶ 10; Andrade Decl., Ex. C (Order of the Immigration Judge). Both parties waived appeal of the immigration judge's decision. *Id.*; Douglas Decl., ¶ 10. Petitioner's removal order therefore became final on the date of its issuance. Andrade Decl., Ex. C (Order of the Immigration Judge).

In October 2023, ERO began efforts to secure a travel document to remove Petitioner to Ethiopia. Douglas Decl., ¶ 11. On April 5, 2024, while Petitioner's travel document request was

[4] This Office did not receive Petitioner's complete A-File prior to submitting this return.

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pending, ERO released Petitioner from custody pursuant to an OSUP. *Id.*, ¶ 12. On June 12, 2024, Petitioner applied for, and was later granted, Temporary Protected Status ("TPS") through December 12, 2025. *Id.*, ¶¶ 12, 15.

On February 6, 2025, ERO obtained a travel document from the Ethiopian Embassy in Washington D.C. which expired during the time Petitioner had TPS. Douglas Decl., ¶ 14; Andrade Decl., Ex. E (Laissez-Passer).

On January 6, 2026, Petitioner was stopped by a Montana Highway Patrol officer for driving above the speed limit. Douglas Decl., ¶ 16; Andrade Decl., Ex. D (Form I-213, Jan. 2026). Petitioner was taken to a Drug Enforcement Agency office in Billings, Montana, and interviewed by a Customs and Border Patrol ("CBP") agent. Douglas Decl., ¶ 17; Andrade Decl., Ex. D (Form I-213, Jan. 2026). He was then transferred to the Malta Border Patrol Station for further interview and processing. *Id.*; Andrade Decl., Ex. D (Form I-213, Jan. 2026). Following a determination there was a significant likelihood of removal to Ethiopia, Petitioner's OSUP was revoked, and he was taken into ICE custody and transported to the NWIPC.[5] Douglas Decl., ¶¶ 17-18; Andrade Decl., Ex. D (Form I-213, Jan. 2026).

ERO is determining whether Petitioner may be removed pursuant to his expired laissez-passer or whether a new travel document must be obtained to execute Petitioner's removal order. Douglas Decl., ¶ 19. ERO believes there is a significant likelihood of Petitioner's removal to Ethiopia in the reasonably foreseeable future; there are no plans to remove Petitioner to a third country. *Id.*, ¶ 20.

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[5] The phrase "Bag and Baggage," which is not a formal policy or standardized procedure, is an internal shorthand used by ERO personnel to refer to individuals who are subject to a final order of removal and who are being processed for imminent removal. *See Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *1 n.1 (W.D. Wash. Dec. 24, 2025) (noting Respondents' repeated failure to explain what the phrase "Bag and Baggage" means). The use of this colloquial terminology does not reflect the existence of any separate policy or practice, nor does it alter Federal Respondents' obligations under 8 C.F.R. § 241.13(i).

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III. LEGAL STANDARD

"The district courts of the United States … are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. Petitioner's Post-Order Detention is Consistent with Statute and the Framework Articulated by the Supreme Court in *Zadvydas*.

This Court should dismiss the petition because Petitioner has failed to carry his initial burden under *Zadvydas*, 533 U.S. at 701. Under *Zadvydas*, post-order detention is presumptively lawful for six months. *Zadvydas*, 533 U.S. at 701. After this period, Petitioner bears the burden to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* Only then does the burden shift to the Government to demonstrate that removal remains reasonably foreseeable.

Federal Respondents acknowledge that the presumptively reasonable six-month removal period has lapsed in the instant case. Petitioner's removal order became administratively final on September 28, 2023, and therefore the presumptively reasonable six-month period of post-order detention expired on March 28, 2024, shortly prior to his release. Douglas Decl., ¶¶ 10, 12. Petitioner asserts that "Ethiopia [has] refused to cooperate with his attempted removal and

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declined to issue him a travel document." *See* Pet. at ¶ 70. He is wrong. Ethiopia has neither refused to cooperate with removal efforts nor refused to issue Petitioner a travel document. Douglas Decl., 14; Andrade Decl., Ex. E (Laissez-Passer).

Petitioner offers no objective evidence of insurmountable barriers to his removal, such as explicit refusal by Ethiopia to accept him, or a lack of diplomatic channels. *See Ma v. Ashcroft*, 257 F.3d 1095, 1104 (9th Cir. 2001). By contrast, ICE has presented evidence it has previously obtained a travel document for Petitioner's removal to Ethiopia, which strongly suggests that removal to Ethiopia is practically feasible. Even if ICE is unable to effectuate removal pursuant to Petitioner's expired laissez-passer, there is no reason to believe the Ethiopian government would refuse to issue him a new travel document. Douglas Decl., ¶ 20. ICE therefore anticipates there is a significant likelihood of Petitioner's removal to Ethiopia in the reasonably foreseeable future. *Id.*

Accordingly, Petitioner's detention is lawful pursuant to 8 U.S.C. § 1231(a)(6) pending his removal. At this stage, the burden remains on Petitioner to present "good reason" to believe that there is no significant likelihood of removal in the reasonably foreseeable future, and he has not done so. *Zadvydas*, 533 U.S. at 701.

B. Petitioner's Claims as to Third Country Removal are Not Justiciable.

Petitioner challenges the legality of his theoretical removal to a third country. *See* Pet. at ¶¶ 79-92. However, a claim resting on speculative and unsupported injury does not satisfy Article III's case-or-controversy requirement. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) ("Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies.") (citations omitted); *see also Serrato v. Clark*, 486 F.3d 560, 566 (9th Cir. 2007) (explaining that a habeas petitioner must show an actual injury that is not conjectural or hypothetical).

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Petitioner presents no evidence ICE seeks to remove him to a third country. There is no indication that ICE has initiated any steps towards effectuating his removal to any country other than Ethiopia. Douglas Decl., ¶ 20. Moreover, Petitioner's arguments are contrary to statute and Supreme Court precedent. In *Jama v. ICE*, the Supreme Court discussed the steps of "the country-selection process" to be followed by ICE in trying to effectuate a removal order. *Jama*, 543 U.S. at 332. The Court explained:

> "Section 1231(b)(2) provides four consecutive removal commands: (1) An alien shall be removed to the country of his choice (subparagraphs (A) to (C)), unless a condition eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen (subparagraph (D)), unless a condition eliminating that command is satisfied; (3) otherwise he shall be removed to a country with which he has a lesser connection (subparagraph (E), clauses (i) to (vi), including the country of his birth (clause (iv))); or (4) if that is "impracticable, inadvisable, or impossible," he shall be removed to another country whose government will accept him (subparagraph (E), clause (vii))."

Id. Petitioner's claims are therefore based on the hypothetical possibility of his removal to a third country other than Ethiopia, which is wholly speculative and not ripe for review.

ICE has obtained a travel document for Petitioner from the Ethiopian Embassy. Douglas Decl., ¶ 14. While Petitioner's travel document has since expired, the Ethiopian government's prior issuance of a travel document in Petitioner's name suggests it is likely to issue a new travel document in the future. *Id.*, ¶¶ 14, 19. There is no reasonable basis to conclude that ICE will attempt to remove Petitioner any third country. *Id.*, ¶ 20. Petitioner cannot establish threat of injury sufficient to satisfy Article III's case-or-controversy requirement without demonstrating that each step in his feared hypothetical chain of events is likely to occur, which he has failed to do. *See infra* § IV.D.1.

Petitioner is an Ethiopian national and ICE has previously obtained a travel document for his removal. Accordingly, Petitioner's removal to Ethiopia – not to some unidentified third country – is the straightforward result contemplated by 8 U.S.C. § 1231(b)(2). The statute and

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Supreme Court precedent establish a sequence of removal destinations, and third-country removal becomes an option only when removal to a noncitizens country of nationality is "impracticable, inadvisable, or impossible," and there is nothing to suggest that is the case here. *Id.* at § 1231(b)(2)(E)(vii); *see also Jama*, 543 U.S. at 341.

Several courts in this district have found that such claims are not the proper subject of an immigration habeas petition, where, as here, Petitioner presents no evidence that removal to a third country is sought. *See Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, *7 (W.D. Wash. Dec. 24, 2025) (explaining "district courts properly decline to issue advisory opinions or to declare rights in hypothetical cases rather than live cases or controversies.") (citing *Tran v. Bondi*, C25-01897-JLR, 2025 WL 3140462, at *4 (W.D. Wash. Nov. 10, 2025) (citation omitted). Similarly, Petitioner's claims are not part of a live controversy because there is no suggestion that removal to a third country is being sought or likely to occur. Petitioner's third country removal claim must therefore be denied.

C. Petitioner's Punitive Banishment Argument Does Not Demonstrate that DHS's Third Country Removal Policy is Unconstitutional.

Petitioner's "punitive third country banishment" argument fails because it lacks any factual basis demonstrating that the third-country removal policy is unconstitutional either on its face or as applied to the facts here. *See* Pet. at ¶¶ 84-92.

First, Petitioner cannot meet the heavy burden required for a facial challenge. A facial challenge demands a showing that a law "is invalid in toto – and therefore incapable of any valid application." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1982). Such challenges are "strong medicine" and are disfavored because they "often rest on speculation" and risk "premature interpretation of statutes on the basis of factually barebones records." *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998); *Wash. State Grange*

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v. Wash. State Republican Party, 552 U.S. 442, 450 (2008). Petitioner's broad assertions that the program imposes punishment on its subjects are precisely the type of speculative allegations that these cases reject.

Second, Petitioner pleads no facts supporting an as-applied claim. Petitioner does not allege which specific third country he fears removal to because of its punitive nature, why his feared harm is likely to occur in the event of his removal to said third country, or any circumstances that would make such removal punitive in his case. Unlike in *Nguyen v. Scott*, Petitioner here provides no evidence that his removal to a third country would likely result in imprisonment or harm. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025). As such, Petitioner's punitive third country removal claim fails.

D. Petitioner Fails to Establish Entitlement to Permanent Injunctive Relief.

Petitioner asks this Court to enjoin Respondents from re-detaining him "without first holding a hearing before a neutral decisionmaker at which the government bears the burden of establishing flight risk or danger to the community by clear and convincing evidence," among other conditions. Pet. at 26-27, Prayer for Relief subsections (c)-(d). Petitioner also seeks an injunction barring third-country removal. Pet. at 26, Prayer for Relief subsections (f)-(g).[6]

1. Third Country Removal

Petitioner's request for a permanent injunction preventing ICE from removing him to a third country should be denied because he has failed to establish an actual threat of irreparable harm. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) ("Issuing a preliminary injunction based only on a *possibility* of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing

[6] Respondents note Petitioner's Prayer for Relief does not include a subsection (e). *See* Pet. at 26-27.

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that the plaintiff is entitled to such relief.") (citation modified).

"In seeking a permanent injunction, the moving party must convince the court that relief is needed: 'The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.'" *Flores Torres v. Hermosillo*, Case No. 2:25-cv-02687-LK, *8 (W.D. Wash. Jan 20, 2026) (quoting *Cummings v. Connell*, 316 F.3d 886, 897 (9th Cir. 2003) and *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (cleaned up)).

Petitioner's request for permanent injunctive relief barring third country removal rests on the following hypothetical chain of events: (1) the Ethiopian Embassy rejects ERO's request to accept his removal pursuant to the expired laissez-passer; (2) the Ethiopian government then refuses to issue Petitioner a new travel document; (3) ERO is ultimately unable to obtain Ethiopia's assent to Petitioner's removal, such that it must initiate the process of identifying a suitable third country; and (4) ICE would then deprive Petitioner of notice and opportunity to raise a fear-based claim to any third country identified for removal.

On these facts, the assertion that ICE would remove Petitioner to some unidentified third country is purely conjectural. A mere hypothetical possibility of harm untethered to any evidence that removal to Ethiopia is unavailable or that ICE has any intention of removing him to a country other than Ethiopia cannot establish the irreparable harm required to justify permanent injunctive relief. *Winter*, 555 U.S. at 22.

2. Re-Detention

Subsections (c)-(d) in Petitioner's Prayer for Relief conflict with the post-order detention and removal scheme established in 8 U.S.C. § 1231 and run afoul of the jurisdiction-stripping provision prescribed by Congress in 8 U.S.C. § 1252(g). *See* Pet. at 26-27.

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Federal Respondents acknowledge that some opinions in this District have recently found that the Due Process Clause requires a pre-deprivation hearing before revocation of an OSUP. *See, e.g.*, *Thach Wana v. Bondi, et al.*, No. 2:25-CV-02321-RSL, 2025 WL 3628634, at *5 (W.D. Wash. Dec. 15, 2025); *Sieng Kim Khim v. Bondi, et al.*, No. 2:25-CV-02383-RSL, 2025 WL 3653724, at *4 (W.D. Wash. Dec. 17, 2025).[7] Federal Respondents submit, however, that in the context of a noncitizen with a final order of removal already in place, pre-deprivation hearings are not mandated by the Due Process Clause where the rationale for re-detention is to execute a final order of removal. The regulations, which do not mandate formal hearings prior to re-detention, provide constitutionally adequate process under such circumstances. 8 C.F.R. § 241.13(i); 8 C.F.R. § 241.4(l). There is no statutory or regulatory requirement for a hearing *prior to* re-detention following the revocation of an OSUP. *See* Pet. at ¶ 45 (quoting 8 C.F.R. § 241.13(i)(3), which requires ICE to conduct an informal interview "promptly after" a noncitizen's return to custody).

The Supreme Court has repeatedly rejected reading such procedural requirements into immigration detention statutes. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (declining to read a specific bond hearing requirement into 8 U.S.C. § 1231(a)(6) because "reviewing courts . . . are generally not free to impose [additional procedural rights] if the agencies have not chosen to grant them") (quoting *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978)) (cleaned up); *see also Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018). There is no Supreme Court decision that requires the Government to justify immigration detention at a pre-deprivation hearing in this context, let alone one that requires a

[7] Federal Respondents note these cases did not consider whether 8 U.S.C. § 1252(g) bars the relief sought here. The issue was neither raised by the parties nor addressed by the court, so those decisions do not resolve the threshold jurisdictional question presented in this case.

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heightened "clear and convincing" evidentiary burden. *See Arteaga-Martinez*, 596 U.S. at 581.

Furthermore, in circumstances where re-detention would be predicated on executing a final order of removal, requiring the Government to justify detention by clear and convincing evidence at a pre-detention hearing would inhibit the Executive's function of immigration enforcement, contrary to 8 U.S.C. § 1252(g). *See Thuraissigiam*, 591 U.S. at 112 (noting that "a major objective" of the Illegal Immigration Reform and Immigrant Responsibility Act was to protect the Executive's discretion from "undue interference by the courts.") (internal citation and quotation marks omitted). Per 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to … *execute removal orders* against any alien." 8 U.S.C. § 1252(g) (emphasis added). The Ninth Circuit has made clear that § 1252(g)'s jurisdictional bar "does not include any temporal caveats." *Rauda v. Jennings*, 55 F. 4th 773, 777 (9th Cir. 2022) (holding that § 1252(g) bars any challenge to the discretionary decision to execute a removal order "[n]o matter how [a petitioner] frames it[.]"). That is, "'the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it. Both are covered by the statute.'" *Id.* (quoting *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020)). As in *Rauda*, Petitioner's request for relief here is foreclosed by § 1252(g)'s plain language.

Even if this Court were to conclude that some form of pre-deprivation hearing is required, it should not impose a clear-and-convincing-evidence standard unsupported by statute or controlling Supreme Court precedent. At most, the Government should be required to demonstrate any of the conditions outlined by the applicable regulations by a preponderance of the evidence. *See* 8 C.F.R. §§ 241.13(i), 241.4(l). Accordingly, this Court should not grant Petitioner's request for a permanent injunction barring re-detention without a hearing at which

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the Government bears an elevated "clear and convincing" evidentiary burden. Pet. at 26, Prayer for Relief, subsection (c).

Finally, Petitioner asks this Court to enjoin ICE from re-detaining him without first obtaining a valid travel document; providing the travel document to him and his counsel; offering Petitioner the opportunity to leave on his own within two months; and only if Petitioner does not leave, if concrete arrangements have been made for him to be put on a flight to Ethiopia. *See* Pet. at 26-27, Prayer for Relief, subsection (d). This request does not comport with *Zadvydas* and is not required by any statute or regulation.[8] Petitioner is subject to a valid final order of removal, and his removal is reasonably foreseeable. Therefore, ICE's authority to detain and remove him is clear. 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 701. Because the conditions on re-detention Petitioner seeks would impermissibly restrain the Executive's discretion to execute his removal order, this request for relief must be denied. *See Rauda*, 55 F. 4th at 777-78.

V. CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny the Petition. Even if this Court were to grant Petitioner's release, it should deny the additional relief requested in Petitioner's Prayer for Relief subsections (c)-(g). *See* Pet. at 26-27.

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[8] The cases cited by Petitioner in support of this request also do not consider whether 8 U.S.C. § 1252(g) bars such relief. *See* Pet. at 27, Prayer for Relief, subsection (d).

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DATED this 20th day of March, 2026.

Respectfully submitted,

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I certify that this memorandum contains 4,178 words, in compliance with the Local Civil Rules.