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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

B-P-,

Petitioner,

v.

JULIO HERNANDEZ, SEATTLE FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT AND REMOVAL OPERATIONS ("ICE/ERO"); TODD LYONS, ACTING DIRECTOR OF IMMIGRATION CUSTOMS ENFORCEMENT ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; AND PAMELA BONDI, ATTORNEYGENERAL OF THE UNITED STATES,

Respondents.

Case No. 3:26-cv-00450-AN

RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents, through counsel, submit this return to Respondent's Petition for Writ of Habeas Corpus, ECF 1. This return is supported by a Declaration ("Decl. ISO Return") and attached exhibits.[1]

BACKGROUND

Petitioner, a former lawful permanent resident born in Laos, was convicted of robbery he committed as part of a gang in 1995. ECF 1 ¶ 35; Decl. ISO Return ¶ 4. Shortly after being released from prison, in 1998, Petitioner was convicted of attempted aggravated murder, robbery in the second degree, and attempted assault in the first degree. Decl. ISO Return ¶ 4. He was sentenced to a total of over 16 years in prison. *Id.* Upon being released from prison, Petitioner was placed in removal proceedings and ultimately ordered removed by an immigration judge because of his criminal convictions. Decl. ISO Return, Ex. 1 (removal order).

Approximately three months after being ordered removed, Petitioner was released from detention and placed on an Order of Supervision (OSUP). ECF 1 ¶ 39; Decl. ISO Return ¶ 7, Ex. 2 (OSUP documentation). ICE has been unable to effectuate Petitioner's removal order because Laos never issued a travel document for him. Recently, however, Laos has begun accepting deportees from the United States and issuing travel documents that are valid for 90 days. ECF 1 ¶ 55; Decl. ISO Return ¶¶ 8, 10. DHS has applied for a travel document for Petitioner and is awaiting its

[1] The declarant's name has been redacted for purposes of safety and privacy. Petitioner does not oppose this redaction and has been provided with an unredacted copy of the declaration, which Petitioner has agreed to keep confidential.

issuance. Decl. ISO Return ¶ 9. DHS has agreed, however, to not detain Petitioner until a travel document is issued. *Id.* ¶ 12. DHS has also indicated it does not intend on removing Petitioner anywhere other than Laos. *Id.* ¶ 11. DHS has further committed that, if it revokes Petitioner's OSUP, it will follow the statute and regulations, including but not limited to, informing Petitioner of the reasons for the revocation and conducting an informal interview to afford Petitioner an opportunity to respond to the reasons for revocation. *Id.* ¶ 14; 8 C.F.R. § 241.13(i)(3).

Petitioner filed the present Petition because he feared that DHS would revoke OSUP and detain him at his March 10, 2026, appointment. That did not happen. Decl. ISO Return ¶ 13. Respondents now file this return to the Petition.

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. Allapattah 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). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

DISCUSSION

I. 8 U.S.C. § 1252(G) STRIPS THIS COURT OF JURISDICTION TO REVIEW DHS'S DETERMINATION OF WHETHER OR WHEN TO EXECUTE PETITIONER'S VALID REMOVAL ORDER.

This Court does not have jurisdiction to review any of Petitioner's claims. Under 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." The Supreme Court has explained that § 1252(g) "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). The Court has further explained that while § 1252(g) does not cover "all or nearly all deportation claims," it does apply to the Government's decisions to execute removal orders. *Id.* at 479, 482.

The Ninth Circuit has further explained that the executive's decision of *when* to execute a removal order is also unreviewable under § 1252(g). In *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022), the court held that § 1252(g) stripped jurisdiction from district courts to enjoin removal while a noncitizen seeks to reopen immigration proceedings. The court explained that the executive's discretion to execute removal orders necessarily includes the discretion to decide both "whether" and "when" removal occurs. *Id.*

The Third, Sixth, and Seventh Circuits have similarly held that § 1252(g) bars habeas petitions seeking to prevent removal until the petitioner can pursue relief from a removal order. *Tazu v. Att'y Gen. of the United States*, 975 F.3d 292, 297 (3d

Cir. 2020)); *Hamama v. Adducci*, 912 F.3d 869, 873 (6th Cir. 2018); *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021).

Several district courts within the Ninth Circuit have followed suit, ruling that requests to delay removal so that habeas petitioners may contest their removal orders or wrap up their affairs are barred by § 1252(g). *See, e.g.*, *Saelee v. Hernandez*, No. 2:26-CV-00735-TL, 2026 WL 1045223 (W.D. Wash. Apr. 17, 2026); *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765 (W.D. Wash. Mar. 5, 2026); *Aleman v. Bondi*, No. 2:25-CV-02346-JNW, 2026 WL 102457 (W.D. Wash. Jan. 14, 2026); *but see M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *7 (D. Or. Aug. 21, 2025) (holding that § 1252(g) does not bar review of claims involving "the lack of process surrounding [the petitioner's] detention"); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *3 (W.D. Wash. Dec. 19, 2025) (same).

Most recently, a court in this district ruled that it did not have jurisdiction to review DHS's discretionary action to execute a removal order in a case involving a petitioner who had been ordered removed to Laos. *O. S. S. v. Hernandez*, No. 3:26-CV-00796-IM, ECF 12 (D. Or. April 27, 2026). There, the petitioner did not challenge DHS's authority to execute the removal order; he challenged only the procedures he anticipated DHS would utilize to revoke OSUP and sought advanced notice before being taken into custody for removal. *See id.* at ECF 1, 7. The Court concluded that it did not have jurisdiction under § 1252(g) to review such claims because "Congress has deprived this Court of jurisdiction to block Respondents' discretionary action to

enforce Petitioner's final order of removal." *Id.* at ECF 12.

Similarly, in *Saelee*, the Western District of Washington held that § 1252(g) stripped the court of jurisdiction to grant a habeas petition involving two Laotian noncitizens with removal orders. 2026 WL 1045223 at *4–5. There, the petitioners argued that they were not challenging their removal orders but rather seeking "procedural protection against inappropriate and unlawful detention." *Id.* at *3. Specifically, the petitioners sought an order requiring DHS to give them at least six months' notice before arresting them for removal so that they could make preparations to "fight their removal" and "wrap up their affairs with their families." *Id.* at *4. In light of this request for relief, the Court concluded that the petitioners were challenging "the timing of execution of removal, not the fact or process of detention." *Id.* Noting that the law does not require "even one month's notice" before OSUP may be revoked, the court held that it did not have jurisdiction under § 1252(g) to "interfere with *when* Respondents can execute a removal order." *Id.* (emphasis in original).

Here, as in *Rauda*, *O.S.S.*, and *Saelee*, the crux of Petitioner's claims is that he wants to delay his removal. ECF 1 at 25 (requesting this Court enjoin DHS from detaining Petitioner at his upcoming check-in appointment and at any future time without advance notice). Petitioner does not appear to be challenging his removal order or DHS's authority to execute it. Rather, he asks that the Court pause his removal and order DHS to give him advanced notice of any OSUP revocation. Thus,

Petitioner's claims, however they are framed, amount to a request for DHS to delay the execution of the removal order, something the Ninth Circuit in *Rauda* held is barred under § 1252(g).

Petitioner has a valid removal order and a significant likelihood of obtaining a travel document from the government of Laos. It is within DHS's discretion to take Petitioner into custody in anticipation of obtaining that travel document. 8 C.F.R. § 241.13(h)(4) ("The Service may, in the exercise of its discretion, withdraw approval for release of any alien under this section prior to release in order to effect removal in the reasonably foreseeable future . . . ."); *id.* at (i)(2) ("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 that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."); 8 C.F.R. 241.4(l)(2)(i) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official...[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien."). These are precisely the discretionary decisions § 1252(g) was designed to protect from judicial review. *Rauda*, 55 F.4th at 777–78. Allowing noncitizens to halt the execution of their removal orders until they receive advanced notice of removal—notice not required by the statute or regulations—would make it substantially more difficult for DHS to effectuate removal orders, especially where, as here, the travel document is likely to expire in 90 days. Section 1252(g) bars such interference. Therefore, this Court is without

jurisdiction to hear Petitioner's claims.

II. THE PROCESS PETITIONER HAS RECEIVED AND WILL RECEIVE IS SUFFICIENT UNDER THE FIFTH AMENDMENT.

Notice and an opportunity to be heard are built into the regulations governing OSUP revocation. Specifically, DHS is required to give notice of the reasons for OSUP revocation and to conduct an informal interview "to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). These processes are required to take place "upon revocation." *Id.* DHS has indicated it will provide this process to Petitioner if his OSUP is revoked and Petitioner is taken into custody in anticipation of removal. Decl. ISO Return ¶ 14. In short, DHS has committed to following the law.

But Petitioner demands more. He asks this Court to order DHS to provide notice and a formal hearing by a "neutral decisionmaker" *before* OSUP is revoked. ECF 1 at 25. As explained below, this demand is not supported by the statute or regulations, nor is it required by the Due Process Clause of the Fifth Amendment.

The Supreme Court has identified three factors courts must use to determine whether the government provided adequate process to those deprived of an interest protected by the Fifth Amendment:

> First, the private interest that will be affected by the official action; second, 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; and finally, the Governments 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).

With regard to the first *Mathews* prong, there is no doubt Petitioner's liberty interest is weighty. But the Ninth Circuit has instructed that an alien's private interests under the *Mathews* test are "diminished" when they are "subject to an order of removal from the United States." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

The second prong of the *Mathews* test, "the risk of erroneous deprivation," requires an inquiry into the process provided by the government. "[T]he Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero, a result that is beyond grasp." *Rodriguez Diaz*, 53 F.4th at 1213. A formal hearing is "neither a required, nor even the most effective, method of decisionmaking in all circumstances." *Mathews*, 424 U.S. at 348. All that is required is "notice of the case against [the individual]" and an "opportunity to meet it." *Id.* "The role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982).

Here, the risk of erroneous deprivation is low given the protections Petitioner has been and will be afforded. Petitioner has already been given layers of due process to ensure that his detention and removal are lawful, including all the protections and processes provided in immigration proceedings, which culminated in an immigration judge ordering Petitioner removed. Decl. ISO Return, Ex. 1. Petitioner is also

protected by the fact that OSUP may only be revoked for certain reasons, including, as relevant here, a change in circumstances such that removal becomes significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). Given that DHS has applied for a travel document and agreed not to revoke OSUP until DHS receives the travel document, Petitioner's removal will be imminent at that point.[2] And if Petitioner's OSUP is ultimately revoked, he will be given formal notice of the reason for the revocation and an interview to give him "an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(2)–(3); Decl. ISO Return ¶ 14. Petitioner already has counsel and knows that Laos is accepting deportees, so he will be well-prepared to give a response to the notice if OSUP is revoked. Simply put, Petitioner has been and will be afforded due process at every step of his removal process, mitigating any risk of error.

Finally, the third *Mathews* factor is the government's interest. The Ninth Circuit has made clear that DHS has an "obvious interest in protecting the public from dangerous criminal aliens," and that detaining dangerous criminals is "clearly 'reasonably related' to the government's interest in protecting the public." *Rodriguez Diaz*, 53 F.4th at 1208; *Martinez v. Clark*, 124 F.4th 775, 786 (9th Cir. 2024). Moreover, the Supreme Court has "specifically instructed that in a *Mathews* analysis,

[2] Respondents disagree with Petitioner's argument that a travel document is required to establish a significant likelihood of removal in the reasonably foreseeable future, ECF1 ¶ 7, but the Court does not need to reach that issue because DHS has agreed to not revoke OSUP until it has a travel document.

[courts] 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)). And as the time for removal draws closer, "the risk of a detainee absconding also inevitably escalates," heightening the interest in detaining the alien *Id.* All of these interests are "of the highest order that only increase with the passage of time." *Rodriguez Diaz*, 53 F.4th at 1208.

Here, the government's interests are at their zenith. Petitioner has served multiple prison sentences for attempted aggravated murder, robbery, and assault. DHS has an indisputably weighty interest in removing him, notwithstanding his recent alleged success on OSUP. He has been ordered removed by an immigration judge to Laos, which has begun accepting deportees and issuing travel documents. As Petitioner's removal becomes more likely and draws nearer, the government's already strong interest in detaining him increases. Simply put, the government's interests, which are already "of the highest order," are significantly heightened here.

In sum, Petitioner's weighty liberty interest is lessened by his removal order, the Government's interest in detaining and removing dangerous criminals with removal orders is significant, and the process Petitioner has been afforded (and will be afforded upon OSUP revocation) adequately mitigates any risk of erroneous detention. Thus, the laws and regulations authorized by Congress pass constitutional muster under the *Mathews* test, especially as applied to Petitioner. This Court should

therefore deny Petitioner's claims for procedures that go above and beyond what the statute, regulations, and Fifth Amendment require.

III. PETITIONER'S CLAIMS RELATING TO THIRD COUNTRY REMOVAL AND FUTURE VIOLATIONS OF THE OSUP REGULATIONS ARE MOOT.

Petitioner makes several claims based on what he speculates will happen if his OSUP is revoked. First, he claims that DHS will, in the future, violate its statutory and regulatory obligations relating to OSUP revocation. ECF 1 ¶ 88, 94–95. This claim is unripe and speculative at best. Petitioner has not been detained, and DHS has indicated that if it revokes OSUP, it will follow the statute and regulations. Decl. ISO Return ¶ 14. These claims are therefore both speculative and moot.

Second, Petitioner claims that if his OSUP is revoked, DHS will remove him to a third country. But DHS has represented that it does not intend to pursue removal of Petitioner to a third country. Decl. ISO Return ¶ 11. Petitioner's claims to the contrary are similarly speculative and moot.

CONCLUSION

Respondents, therefore, respectfully request that the Court find it has no jurisdiction to adjudicate Petitioner's claims. If the Court finds it has jurisdiction,

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Respondents respectfully request that the Court deny the Petition for a Writ of Habeas Corpus on the merits.

DATED this 8th day of May, 2026.

Respectfully Submitted,

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United States Attorney

/s/ Andrew B. Kartchner
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Assistant U.S. Attorney
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