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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

B-P-, an adult

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations; TODD LYONS, Acting Director of Immigration Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and TODD BLANCHE, Attorney General of the United States,

Respondents.

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

Agency No. A XXX-XXX-801

PETITIONER'S RESPONSE TO NOTICE OF INTENDED REMOVAL

Petitioner requests that the Court grant some limited discovery in this case and order an evidentiary hearing on the allegations underpinning Respondents' assertion that the Court lacks jurisdiction. In a series of filings, ECF 17, ECF 25 and now ECF 27, Respondents have unilaterally alleged facts and shared an unauthenticated document which they purport are both sufficient and admissible evidence that this Court lacks jurisdiction to rule on whether the process Petitioner is entitled to with respect to their intent to detain him will comply with the laws of the United States, including, importantly, the Due Process Clause. ECF 27 at 3-4.

Respondents broadly allege an unproven fact: that Petitioner's removal is significantly likely in the reasonably foreseeable future. ECF 17 at 10 n.2, ECF 25 at 8, ECF 27 at 4. Petitioner disputed that "fact" and the evidence underlying that purported fact. ECF 22 at 10-11. Respondents claim that this purported fact "is now indisputable" because, and for the sole and only reason, Respondents have a document which they purport is a travel document authorizing the Petitioner's transportation to Laos. ECF 27 at 4. As Petitioner argued in his reply, even once a travel document has been obtained, removal is not necessarily reasonably foreseeable because many individuals remain in detention for three months or more after ICE notifies them that it has received their travel document, and ICE may even have to re-apply for a travel document if the original has expired. ECF 22 at 11, n. 7 (citing Supp. Cunnings Dec., Ex. B, Declaration of Dr. Thao Ha, ¶ 13).

The reasonable foreseeability of removal is a question of fact. *See Xi v. INS*, 298 F.3d 832, 840 (9th Cir. 2002) (characterizing the question of whether petitioner's removal to China was reasonably foreseeable as a "factual question"); *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (looking to the specific evidence in the petitioner's case to determine the foreseeability of his removal); *Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (describing a fact-intensive inquiry into foreseeability). Where "as here, the jurisdictional facts are contested or more facts are

needed[,]" discovery is proper. *Laub*, 342 F.3d at 1093. The limited discovery and evidentiary hearing Petitioner seeks goes to the heart of the case and Respondent's jurisdictional argument. The Petitioner has demonstrated the facial deficiencies of Respondents' declaration under the Federal Rules of Evidence; and almost equally important, has put forth good-faith arguments explaining why the bald assertions of these critical facts by Respondent must be tested like any other litigant's factual assertions. ECF 22 at 20-21 (arguing that there is no reason to credit the Deportation Officer's statements without additional proceedings and the opportunity for the taking of the declarant's deposition.) Under the good cause standard, this showing is sufficient because "if the facts are fully developed, [the Petitioner may] be able to demonstrate that he is entitled to relief." *Smith v. Mahoney*, 611 F.3d 978, 996–97 (9th Cir. 2010) (cleaned up).

Notably, since Respondents filed their opposition to Petitioner's discovery motion, one of the cases that they relied on, *Saelee v. Hernandez*, No. 2:26-cv-00735-TL, 2026 WL 1045223 (W.D. Wa. Apr. 17, 2026) ("Saelee I"), reversed its prior ruling that it lacked jurisdiction over the petitioners' request that the court "enjoin the Respondents from arresting Petitioners without notice when they reported, pursuant to the requirements of their orders of supervision, for scheduled check-ins with ICE." *Saelee v. Hernandez et al.*, No. 2:26-CV-00735-TL, 2026 WL 1868865, at *4 (W.D. Wash. June 29, 2026). ("Saelee II"). The court specifically concluded that § 1252(g)'s jurisdictional bar did not preclude relief because "the claim that detaining Petitioners without notice at their ICE check-ins would violate due process is not, in fact, fundamentally a challenge to the executive's discretion as to whether to execute a removal order and when to do it." *Id.* (internal quotations and citation omitted). In ruling that "surprise 'check-in' re-detentions of non-citizens" previously released under OSUPs violate due process, the court aligned with the majority of district courts in the Ninth Circuit to have considered this question. *Id.* at *5 (citing cases).

Petitioner does not challenge any aspect of the removal proceedings such as seeking to delay removal to pursue a motion to reopen or other immigration relief, as the *Rauda* petitioner did, *see* 55 F.4th 773, 777 (9th Cir. 2022). Petitioner challenges the legality of ICE's decision to revoke his release and detain him; he only argues that ICE must exercise its discretion to revoke his Order of Supervision to detain him within the bounds of due process and the governing regulations. *See* ECF 1 at ¶¶ 78-89 (APA claim for violation of OSUP revocation regulation); *id.* ¶¶ 90-95 (procedural due process claim related to revocation of release and detention); *id.* ¶¶ 96-101 (substantive due process claim for detention unrelated to ensuring presence for imminent removal).

Therefore, Petitioner requests that this Court grant limited discovery to enable a full and fair adjudication of the question of its jurisdiction. If Respondents' assertions regarding the veracity of the travel document and the imminence of Petitioner's removal are found to be untrue, this Court squarely has jurisdiction to consider his habeas claims challenging ICE's scheme to detain him without due process, and the case should continue with the no-transfer order in place.

Respectfully submitted on July 23, 2026.

s/ *Stephen W. Manning*
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