Magistrate Judge S. Kate Vaughan

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

VIKTOR MOSKALENKO, Petitioner, v. TODD BLANCHE, *et al.*, Respondents.	Case No. 2:26-cv-00998-SKV FEDERAL RESPONDENTS'[1] RETURN Noted for Consideration: April 13, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner Viktor Moskalenko pursuant to 8 U.S.C. § 1231(a)(6) pending his removal. In 1999, an immigration judge ordered Petitioner removed to Estonia after finding that he was removable based on an aggravated felony conviction. However, immigration officials could not obtain a travel document resulting in Petitioner's release on an order of supervised release ("OSUP") that expressly required him not to "violate any local, state or federal law(s)." Petitioner did not heed this condition and amassed multiple criminal convictions over the decades, with his latest conviction being in 2024.

[1] Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

Upon his release from his latest criminal sentence in October 2025, ICE lawfully revoked Petitioner's OSUP due to his violations of his conditions of release. ICE provided Petitioner with both notice of the reasons for the revocation as well as the opportunity to respond to those reasons during an informal interview. Estonia, the designated country of removal on his removal order, has denied ICE's request for a travel document. Accordingly, ICE is in the process of requesting a travel document from Russia, a third country to where Petitioner has consented to his removal. Pet., at 7.

Petitioner filed this habeas petition alleging that (1) his detention has become unreasonably prolonged; (2) that his OSUP revocation violated due process; and (3) that third country removal procedures are unlawful. Pursuant to this Court's scheduling order, Federal Respondents submit the facts and law below.

II. BACKGROUND

A. Legal Background

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 U.S. 523, 527-29 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and "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).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the alien from the United States." *Id.* To ensure an alien's presence for removal and to protect the community from noncitizens who may present a danger, Congress mandated detention during the "removal period," which is the 90-day period following the issuance of a

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

final order of removal. 8 U.S.C. § 1231(a)(2). During the removal period, ICE[2] is charged with attempting to effectuate removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. 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:

> An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General 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 held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has identified six months as a presumptively reasonable time necessary to bring about a noncitizen's removal. *Id.*, at 701.

If a noncitizen cannot be removed to the country designated in his removal order because the country refuses to accept the noncitizen, the noncitizen has been granted relief from removal to that country, the country refuses to recognize the noncitizen as its citizen, or another reason, Congress has directed ICE to pursue removal to alternate countries. *See* 8 U.S.C. §§ 1231(b)(2)(D), (E); 1231(b)(3); 8 C.F.R. §§ 241.13(a), 241.15.

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[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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TACOMA, WA 98402
(253) 428-3800

If it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, U.S. Department of Homeland Security ("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. OSUP Release Revocation

As described above, the INA authorizes DHS to detain noncitizens with final orders of removal pursuant to 8 U.S.C. § 1231(a) as long as removal is reasonably foreseeable. Once 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 released on an OSUP is not unlimited. Revocation of an OSUP is governed by 8 C.F.R. §§ 241.13(i), 241.4(l), and may occur either: (1) if the noncitizen "violates any of the conditions of release," *id.*, §§ 241.13(i)(1), 241.4(l)(1); or (2) if it is determined "that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." *Id.*, § 241.13(i)(2).

Any noncitizen who violates the conditions of their release may have their release revoked and be returned to ICE custody. 8 C.F.R. § 241.4(l)(1). "Upon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole." *Id.* Furthermore, the noncitizen "will be afforded an initial informal interview promptly after his or her return to Service custody to afford the [noncitizen] an opportunity to respond to the reasons for revocation stated in the notification." *Id.* If the noncitizen is not released after the informal interview, a custody review process is thereafter required. 8 C.F.R. § 241.4(l)(3).

C. Factual Background

Petitioner was born in the U.S.S.R. in what is now Estonia. Andron Decl., ¶ 3. He lawfully entered the country and attained lawful permanent resident status in 1992. Andron Decl., ¶ 4. Immigration officials placed him in removal proceedings in 1999 after he was

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TACOMA, WA 98402
(253) 428-3800

convicted of an aggravated felony. Andron Decl., ¶ 5; Lambert Decl., Ex. A, Notice to Appear. In July 1999, an immigration judge ordered Petitioner removed Estonia. Andron Decl., ¶ 6; Lambert Decl., Ex. B, Order. However, immigration officials could not obtain a travel document at that time resulting in Petitioner's release on an order of supervision ("OSUP") in November 1999 that expressly conditioned his release on not violating "any local, state, or federal law(s)." Andron Decl., ¶ 6; Lambert Decl., Ex. C, 1999 OSUP.

Despite these conditions, Petitioner accrued multiple convictions with the latest being in 2024:

2004: convicted of driving under the influence in Snohomish County, Washington (365-day sentence with 364 days suspended)

2008: convicted of burglary in the first degree in Clark County, Washington (15-month sentence)

2008: convicted of driving under the influence in Clark County, Washington (365-day sentence with 215 days suspended)

2008: convicted of domestic violence court order violation in Clark County, Washington (365-day sentence with 360 days suspended)

2010: convicted of failure to appear on a driving with a suspended/revoked license in Clark County, Washington (364-day sentence with 354 days suspended)

2013: convicted of driving under the influence, reckless driving, and criminal mischief in Multnomah County, Oregon (30-day sentence with 5 years' probation)

2016: convicted of driving under the influence in Multnomah County, Oregon (20-months sentence)

2022: convicted of a no contact/protection/restraining order violation in Clark County, Washington (13-month sentence)

2024: convicted of criminal driving while suspended/revoked in Clackamas County, Oregon (13-month sentence)

Lambert Decl., Ex. D, Form I-213. ICE has served Petitioner with new OSUPs multiple times since 1999. *See* Lambert Decl., Ex. E, 2004 OSUP; Ex. F, 2007 OSUP; Ex. G, 2009 OSUP; Ex.

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TACOMA, WA 98402
(253) 428-3800

H, 2011 OSUP; Ex. L, Form I-213.[3]

In 2025, Petitioner came to ICE's attention while serving his most recent criminal sentence in the Oregon Department of Corrections. Lambert Decl., Ex. D, at 2. On October 27, 2025, ICE took custody of Petitioner on his release from Coffee Creek Correctional Facility. Andron Decl., ¶ 8; Lambert Decl., Ex. D; Ex. I, Warrant for Arrest. ICE served Petitioner with a notice that his OSUP was being revoked. Andron Decl., ¶ 8; Lambert Decl., Ex. J, Notice of Revocation of Release. The notice informed Petitioner that his 2017 OSUP (the latest OSUP) was being revoked because his multiple arrests and convictions between 2020 and 2024 violated the conditions of his release. Lambert Decl., Ex. J. ICE then conducted an informal interview to provide Petitioner with an opportunity to respond to the reasons for his OSUP revocation, but Petitioner declined. Lambert Decl., Ex. K, Alien Informal Interview. The same day, ICE transferred him to the Northwest ICE Processing Center. Andron Decl., ¶ 8.

On December 4, 2025, the Estonian Consulate denied ICE's request for a travel document for Petitioner. Andron Decl., ¶ 9. ICE is requesting a travel document from Russia, but no travel document approval has been received yet. Andron Decl., ¶ 9.

There is no removal scheduled as ICE has yet to obtain a travel document.

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

[3] Undersigned counsel could not locate the 2017 OSUP. However, the Form I-213 states that Petitioner was detained upon his release from Oregon Department of Corrections on December 13, 2017 and then released from custody on a OSUP. Lambert Decl., Ex. L.

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

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 is detained pursuant to 8 U.S.C. § 1231(a)(6).

Petitioner's detention is governed by 8 U.S.C. § 1231(a)(6) because he is subject to a final order of removal. In *Zadvydas*, the Supreme Court analyzed whether the potentially open-ended duration of detention pursuant to 8 U.S.C. § 1231(a)(6) is constitutional. The Court read an implicit limitation of post-removal detention "to a period reasonably necessary to bring about that alien's removal from the United States." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). It was further specified that Section 1231(a)(6) does not permit indefinite detention. *Id.* Thus, "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.*, at 699.

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"). However, the Supreme Court determined that it is "presumptively reasonable" for the Government to detain a noncitizen for six months following entry of a final removal order, while it worked to remove the noncitizen from the United States. *Id.*, at 701. Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id.* Moreover, the Supreme Court noted the six-month presumption "does not mean that every [noncitizen] not removed must be released after six months. To the

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(253) 428-3800

contrary, [a noncitizen] may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Federal Respondents do not dispute that the presumptively reasonable 6-month period has likely expired here. While ICE is unable to remove Petitioner to Estonia, ICE continues to seek a travel document for his removal to Russia.

B. Petitioner's OSUP revocation is consistent with due process.

Petitioner's OSUP revocation raises no due process concerns. ICE complied with the regulatory procedures that provided Petitioner with both notice and an opportunity to be heard on the release revocation. "The procedures set forth in both 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13 are intended to provide noncitizens with fundamental due process protections that courts have found to be constitutionally required." *Hall v. Nessinger*, No. 25-CV-667-JJM-PAS, 2026 WL 18583, at *4 (D.R.I. Jan. 2, 2026); *see also Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, at *6 (D. Md. Aug. 25, 2025) (8 C.F.R. § 241.4 "plainly provide[s] due process protections to [noncitizens] following the removal period as they are considered for continued detention, release, and then possible revocation of release by, among other things, requiring that only certain designated officials make custody determinations; mandating that a noncitizen receive a copy of any decision to release or detain that individual; establishing criteria and factors applicable to detention, release, and revocation determinations; and requiring certain procedural safeguards upon revocation to allow a noncitizen to have an opportunity to be heard to contest the reasons for revocation, including informal interviews and custody reviews"). "Therefore, ICE violates a noncitizen's due process rights when the agency re-detains [hi]m and fails to comply with these revocation procedures." *Hall*, 2026 WL 18583, at *4. Accordingly, Petitioner cannot show a due process violation here.

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(253) 428-3800

"Due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). The *Mathews* test demonstrates that Petitioner's detention is consistent with his due process rights. Under *Mathews*, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.*, at 333 (internal quotation marks omitted). This calls for an analysis of (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 probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. *Id.*, at 334-35.

First, Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." *Reyes v. King*, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in his liberty *generally* does not mean that he possesses a separate or heightened liberty interest in the continuation of his conditional release on OSUP.[4]

Turning to the second *Mathews* factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here is minimal, and ICE has complied with all procedural safeguards in this case. As outlined above, DHS established a clear regulatory framework in 8 C.F.R. § 241.4(l) that sets forth the requirements and process for affecting an OSUP revocation. The designated official, in the exercise of discretion, may revoke an OSUP and return the noncitizen to custody when the alien violates any condition of release. 8 C.F.R. §§ 241.4(l)(1); (l)(2)(ii). Section 241.4(l)(1)[5] further outlines the OSUP revocation procedures and provides that

[4] Federal Respondents acknowledge that courts in this District have found that noncitizens have a liberty interest in their release on OSUP but respectfully disagree with those decisions.

[5] While this section is entitled "violations of conditions of release," ICE did not revoke Petitioner's custody due to any violations. It was revoked because his removal could be effected. However, ICE followed these procedures, which are consistent with the procedures required by the *Makuey I* Order.

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(253) 428-3800

"upon revocation," i.e., not before revocation, "the alien will be notified of the reasons for the revocation" and to conduct an "initial interview promptly after his or return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." *Id.*, § 241.13(l)(1). As described above, these are precisely the procedures ICE followed when the agency revoked Petitioner's OSUP. Thus, this factor favors Federal Respondents.

The third and final factor similarly favors Federal Respondents. The Ninth Circuit has emphasized that the *Mathews* test and procedural safeguards "must account for the heightened government interest in the immigration detention context." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The government "has a legitimate interest in ensuring that a noncitizen subject to a final order of removal appears when necessary to facilitate removal." *See Saelee v. Bondi*, No. 2:25-CV-02677-TLF, 2026 WL 221513, at *6 (W.D. Wash. Jan. 28, 2026) (citing *Tran v. Bondi*, No. 2:25-CV-02335-DGE-TLF, 2025 WL 3725677, at *3 (W.D. Wash. Dec. 24, 2025)). Indeed, these factors are stronger where, as here, the noncitizen has continuously violated the conditions of his release through his criminal conduct.

In sum, the three *Mathews* factors demonstrate that Petitioner's detention comports with procedural due process and that ICE adhered to its own regulations in revoking Petitioner's OSUP.

C. Petitioner should raise his claims concerning third country removal procedures as a class member in *D.V.D.*

Petitioner seeks additional process outside of DHS policy if a third country removal is to proceed. Pet., at 23-24. As a preliminary point, ICE is seeking a third country removal here. However, Petitioner has consented to being removed to Russia. Thus, the procedures raised in Petitioner's claim are not relevant to his potential removal to Russia. This Court should decline to exercise jurisdiction over Petitioner's third country removal claim as a matter of comity

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(253) 428-3800

because the District of Massachusetts has certified a class action in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, that includes the same claim Petitioner here pursues. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity, which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."). Due to the relief he seeks, Petitioner is a member of the Plaintiff Class certified in *D.V.D.* and is bound by the proceedings in that case. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), appeal dismissed, No. 25-1311, 2025 WL 2720812 (1st Cir. June 30, 2025).[6]

D. Petitioner has failed to establish that DHS's third country removal policy is punitive.

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. Pet., at 25-26

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 v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). Petitioner's broad assertions that the

[6] On February 25, 2026, the District of Massachusetts issued an order granting in part the Government's motion to dismiss, as well as Plaintiffs' motion for summary judgment. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2026 WL 521557, at *44 (D. Mass. Feb. 25, 2026). On March 11, 2026, the U.S. Court of Appeals for the First Circuit issued an administrative stay, pausing the District Court judgment until it can adjudicate the Government's motion for a stay pending appeal. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-1393 (1st Cir. Mar. 11, 2026).

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1201 PACIFIC AVE., STE. 700
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(253) 428-3800

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. While ICE is seeking his removal to Russia, Petitioner has consented to being removed to Russia. Pet., at 7. Further, Petitioner does not allege which third country he fears removal to, what harm he personally faces, or any circumstances that would make removal to that country punitive in his case. A claim resting on speculative and unsupported injury does not satisfy Article III's case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). Petitioner's reference to *Nguyen v. Scott* does not support his claim. Pet., at 26. Unlike *Nguyen v. Scott*, Petitioner provides no evidence that his speculative removal to a third country would result in imprisonment or harm. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 WL 2419288, at *25 (W.D. Wash. Aug. 21, 2025). Without factual allegations establishing a realistic danger of punitive treatment, Petitioner's theory remains purely conjectural and nonjusticiable. Thus, Petitioner's claim should be denied. Pet., at 24-26.

E. This Court should deny Petitioner's requests for permanent injunctive relief.

Subsections (d)-(f) in Petitioner's Prayer for Relief exceed the narrow scope of habeas review under 28 U.S.C. § 2241 and conflict with the post-order detention and removal scheme set forth in 8 U.S.C. § 1231. A writ of habeas corpus under 28 U.S.C. § 2241 addresses current unlawful detention, not hypothetical future custody or removal.

First, Petitioner asks this Court to permanently enjoin Federal 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 based on changed circumstances since Petitioner was previously released." Pet. at 26-27. Petitioner's request is contrary to law.

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(253) 428-3800

For OSUP revocation, agency regulations require an evaluation of: (1) whether the noncitizen "violates any of the conditions of release," 8 C.F.R. §§ 241.13(i)(1), 241.4(l)(1); (2) whether there is a "significant likelihood" the noncitizen "may be removed in the reasonably foreseeable future," *id.*, § 241.13(i)(2); or (3) where revocation is deemed to be in public interest. *Id.*, § 241.4(l)(2). There is no statutory or regulatory requirement for a hearing prior to re-detention following the revocation of an OSUP, and the Supreme Court has repeatedly rejected reading such requirements into immigration detention statutes. *See, e.g.*, *Arteaga-Martinez*, 596 U.S. at 582 (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); *Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018).

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). Nevertheless, Federal Respondents respectfully submit that in the context of a noncitizen with a final order of removal, pre-deprivation hearings are not mandated by the Due Process Clause. The regulations, which do not mandate formal hearings prior to re-detention, provide constitutionally adequate process. 8 C.F.R. § 241.13(i)(3); 8 C.F.R. § 241.4(l)(1).

Moreover, in circumstances where re-detention would be predicated on effecting 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

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(253) 428-3800

enforcement and run afoul of the jurisdiction-stripping provision prescribed by Congress in 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).

Second, Petitioner asks the Court to enjoin Respondents from re-detaining him unless several conditions are satisfied, including obtaining and providing a valid travel document, allowing Petitioner an opportunity to depart on his own, and re-detaining him only after concrete travel arrangements are made. Pet., Prayer for Relief ¶ (e). Nothing in *Zadvydas* imposes such prerequisites on the Government's authority to re-detain a noncitizen when circumstances change and removal again becomes reasonably foreseeable. The requested injunction would effectively impose new procedural requirements not found in the governing statutes or precedent.

Moreover, to the extent Petitioner seeks an order restricting the Government's execution of the removal order or dictating the manner in which it may occur, this Court lacks jurisdiction to grant such relief. *See e.g., Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765, at *5 (W.D. Wash. Mar. 5, 2026).

Third, Petitioner requests this Court to enjoin ICE from removing him to a third country without notice, a meaningful opportunity to respond, and due process in reopened removal proceedings. *See* Pet. Prayer for Relief, ¶ (e). For the reasons stated above, Petitioner should be required to pursue these claims as a member of the class identified by the District of Massachusetts in the *D.V.D.* litigation.

Additionally, Petitioner's request is too speculative to satisfy the heavy burden required for permanent injunctive relief. Injunctive relief is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res.*

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(253) 428-3800

Def. Council, Inc., 555 U.S. 7, 24 (2008); *see also Torres v. Hermosillo et al.*, Case No. 2:25-cv-02687-LK, 2026 WL 145715, at *8 (W.D. Wash. Jan. 20, 2026). "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.'" *Id.*, at *8 (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)).

Fourth, Petitioner requests that this Court enjoin Respondents from removing him to any third country where he is likely to face imprisonment or other punishment upon arrival. Petition, Prayer for Relief, ¶ (g). However, the governing statutory and regulatory framework provides a specific process for addressing such concerns. Once DHS designates a third country, Petitioner is afforded an opportunity to express a fear of removal to that country. If Petitioner does not articulate such a fear, or if the fear is determined not to be credible under applicable standards, removal may proceed in accordance with law.

For the reasons articulated above, Petitioner has failed to present sufficient evidence to conclude he will be removed to a country where he faces likely imprisonment or punishment. Without specific evidence that those outcomes are likely to occur, Petitioner's request constitutes nothing more than a "mere possibility" that does not entitle him to relief. *Torres*, 2026 WL 145715, at *8.

Furthermore, if granted, Petitioner's request would require DHS to preemptively assess and prohibit removal based on speculative or unasserted risks, outside the established procedures. The Court should decline to impose such an obligation. DHS cannot reasonably be expected to anticipate all potential outcomes an individual might face upon arrival, particularly where the individual has not invoked the available protection mechanisms. Accordingly, the

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1201 PACIFIC AVE., STE. 700
TACOMA, WA 98402
(253) 428-3800

requested relief is overbroad and not warranted under the governing legal framework for injunctive relief.

Accordingly, even if this Court were to grant habeas relief, the Court should deny the additional relief requested in Petitioner's Prayer for Relief, subsections (d)-(g).

CONCLUSION

For the foregoing reasons, ICE lawfully revoked Petitioner's OSUP and his detention is governed by 8 U.S.C. § 1231(a)(6).

DATED this 7th day of April, 2026.

Respectfully submitted,

s/ Michelle R. Lambert
MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
United States Attorney's Office
Western District of Washington
1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 4,616 words, in compliance with the Local Civil Rules.