District Judge John H. Chun

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

AMIR HUSSEIN BABAKHANLOU, Petitioner, v. TODD BLANCHE, *et al.*,[1] Respondents.	Case No. 2:26-cv-01012-JHC FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for consideration: April 14, 2026

I. INTRODUCTION

This Court should deny Petitioner Amir Hussein Babakhanlou's Petition for Writ of Habeas Corpus. *See* Dkt. 1 ("Pet."). Petitioner is a native and citizen of Iran who is subject to an order of removal that became final on September 11, 2025. U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner under 8 U.S.C. § 1231(a)(6). While the immigration court has granted Petitioner deferral of removal to Iran, ICE is reviewing whether third country removal is available. Petitioner challenges his continued post-order detention at the Northwest ICE Processing Center ("NWIPC") while he awaits removal from the United States.

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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Petitioner's third country removal claims rest on speculation about possible removal without proper notice or opportunity to be heard regarding any potential fear of removal to that country. As discussed below, U.S. Department of Homeland Security ("DHS") will provide Petitioner written notice of its intent to remove him to any third country, as well as an opportunity to be heard regarding his fear of removal thereto, as soon as a suitable third country for Petitioner's removal has been identified. To the extent Petitioner alleges he will be denied due process with respect to *any* potential third country of removal, the record does not support his assertions, and such contingent injuries do not satisfy Article III standing requirements. Finally, 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 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:

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> [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.*

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.*

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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.[2]

C. Petitioner Amir Hussein Babakhanlou

Petitioner is a native and citizen of Iran who entered the United States without inspection or parole on or about December 22, 2005, at or near San Luis, Arizona. *See* Declaration of Barbara Andrade ("Andrade Decl."), Ex. A, Notice to Appear ("NTA"). On December 23, 2005, DHS determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) of the INA and issued him an NTA. Andrade Decl., Ex. A. However, Petitioner's NTA was rejected by the immigration court, and therefore Petitioner was not placed in removal proceedings. *See*

[2] 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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Declaration of Deportation Officer Sooseon Jeon ("Jeon Decl."), ¶ 8.[3] Petitioner was released from detention on December 28, 2005, pursuant to an Order of Recognizance ("OREC").

On December 2, 2014, Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589") application with United States Citizenship and Immigration Services ("USCIS"). Jeon Decl., ¶ 10. On September 20, 2020, USCIS denied Petitioner's application after he failed to appear for an interview. Andrade Decl., Ex. D (Failure to Appear Warning), Jeon Decl., ¶ 10.

On August 2, 2024, Petitioner was encountered by Border Patrol officers at the Tecate, California, Port of Entry, attempting to return to the United States from Mexico. Jeon Decl., ¶ 15; Andrade Decl., Ex. F (Aug. 2024, Form I-213).[4] Petitioner was initially processed for expedited removal, however, on October 28, 2024, DHS issued Petitioner a new NTA and again placed him in removal proceedings. Jeon Decl., ¶ 15; Andrade Decl., Ex. E (NTA). Petitioner's expedited order of removal was vacated upon issuance of his 2024 NTA. *Id.*

On January 7, 2025, an immigration judge conducted a competency inquiry and concluded that Petitioner was incapable of adequately representing himself in his immigration proceedings due to his mental health condition; Petitioner was diagnosed with schizophrenia in 2016. Jeon Decl., ¶ 23; Dkt. 1 at 6. Petitioner was designated as a member of the *Franco-Gonzalez* class and on January 9, 2025, the immigration judge appointed Petitioner a qualified representative in his removal proceedings. Jeon Decl., ¶¶ 24-25.

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[3] Federal Respondents include in this summary the portions of Petitioner's lengthy immigration history that are most relevant to the instant Petition. A comprehensive recitation of Petitioner's immigration history is set forth in Deportation Officer Jeon Jeon's Declaration.

[4] Federal Respondents also note Petitioner's 2024 Form I-213 contains several errors regarding Petitioner's criminal history in the United States. Andrade Decl., Ex. F (Aug. 2024, Form I-21). According to ICE records, the only accurate conviction reflected on the August 3, 2024, Form I-213 is Petitioner's February 17, 2020, conviction for assault with a deadly weapon. Jeon Decl., ¶ 13. Petitioner was also convicted of two other offenses, fraud and damage to property, which are not accurately reflected on this Form I-213. Jeon Decl., ¶ 14.

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On March 4, 2025, after being transferred through several facilities, Petitioner was relocated to the NWIPC. Jeon Decl., ¶¶ 27-31. On June 25, 2025, Petitioner appeared before an immigration judge at the Tacoma Immigration Court for a bond hearing. Jeon Decl., ¶ 34. The immigration judge found Petitioner was both a danger to the community and flight risk and denied Petitioner's request for bond. Jeon Decl., ¶ 34; Andrade Decl., Ex. G (Bond Order).

On June 26, 2025, Petitioner, through counsel, filed a new Form I-589 with the immigration court. Jeon Decl., ¶ 35. On September 11, 2025, Petitioner appeared with his qualified representative for a hearing on the merits of his asylum application. Jeon Decl., ¶ 36. The immigration judge ordered Petitioner removed to Iran but granted Petitioner's application for deferral of removal under the CAT. Jeon Decl., ¶ 36; Andrade Decl., Ex. H (Order of the Immigration Judge). Both parties waived appeal of the immigration judge's decision. *Id.*; Jeon Decl., ¶ 36. Accordingly, Petitioner's removal order therefore became final on the date it was issued. Andrade Decl., Ex. H (Order of the Immigration Judge).

September 12, 2025, ERO began efforts to identify a third country for Petitioner's removal. Jeon Decl., ¶ 37. On January 6, 2026, ICE conducted a custody review and determined Petitioner would not be released from custody. Andrade Decl., Ex. I (Decision to Continue Detention). That same day, Petitioner was served with a Form I-229(a), Warning for Failure to Depart, due to his refusal to cooperate with ICE's requests to assist in his removal. Jeon Decl., ¶ 38; Andrade Decl., Ex. J (Jan. 2026, Form I-229(a)).

On January 6, 2026, Petitioner also requested that he be removed to either Canada or Mexico. Jeon Decl., ¶ 38. ICE sent requests to both Canada and Mexico to approve Petitioner's removal to the same. *Id.* ICE informed Petitioner's qualified representative that it is attempting to effect Petitioner's third country removal to Mexico and Canada. *Id.* There is no indication Petitioner's qualified representative moved to reopen his removal proceedings to raise a claim of

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fear of removal to either Mexico or Canada. On February 20, 2026, ICE again served Petitioner with a Form I-229(a), Warning for Failure to Depart. Andrade Decl., Ex. K (Feb. 2026, Form I-229(a)); Jeon Decl., ¶ 39.

ICE is currently determining whether Canada, Mexico, or the United Kingdom, will accept Petitioner. Jeon Decl., ¶ 42. ICE intends to continue pursuing third country removal and will work with the consulate of the country that accepts Petitioner to obtain a proper travel document. Jeon Decl., ¶ 43. Upon identifying a third country for Petitioner's removal, ICE will notify Petitioner of the anticipated third country and will provide him with an opportunity to raise a fear-based claim to whatever third country is designated for removal. Jeon Decl., ¶ 44.

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

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

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then does the burden shift to the Government to demonstrate that removal remains reasonably foreseeable. *Id.*

Federal Respondents acknowledge that the presumptively reasonable six-month removal period has lapsed in the instant case. Petitioner's removal order became final on September 11, 2025, upon his waiver of appeal. Andrade Decl., Ex. H (Order of the Immigration Judge); 8 C.F.R. § 1241.1(b). As Petitioner has remained in ICE custody, the presumptively reasonable post-order period of detention expired on or about March 11, 2026.

However, it should be noted that Petitioner is at least partially responsible for his detention due to his ongoing refusal to cooperate with ICE's removal efforts, such that ICE has twice served him with Form I-229(a), Warning for Failure to Depart. *See Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003); Andrade Decl., Ex. J; Andrade Decl., Ex. K.

B. Petitioner's Claim of Fear of Removal to a Third Country is Already Addressed by Existing DHS Policy.

Petitioner asks this Court to enjoin his removal to a third country without notice and meaningful opportunity to respond. Pet., at 22-23. But DHS policy already provides the process Petitioner requests.

First, the Court should decline to exercise jurisdiction over Petitioner's third country removal claim as a matter of comity because the District of Massachusetts has certified a class action 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,

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2025 WL 942948, at *1 (D. Mass. Mar. 28, 2025), appeal dismissed, No. 25-1311, 2025 WL 2720812 (1st Cir. June 30, 2025).[5]

Second, DHS has issued guidance regarding third country removals. *See* U.S. Department of Homeland Security, "Guidance Regarding Third Country Removals," Kristi Noem, March 30, 2025,*available at* https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.43.1_1.pdf (last visited March 4, 2026) ("DHS Memo"); U.S. ICE, "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)," Todd M. Lyons, July 9, 2025, *available* at https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf (last visited March 4, 2026) ("July 9 Memo"); *see Kumar*, 2025 WL 3204724, at *2-3 (describing contents of these memos and the distinction between the two).

The July 9 Memo discusses DHS's policies and procedures regarding the removal of individuals with final orders of removals to countries other than those designated for removal in those orders (referred to as "third country removals"). According to the guidance outlined in the July 9 Memo, if DHS has not received diplomatic reassurances from the designated country, DHS will first inform the individual that DHS seeks removal to that country. *Id.* at 2. If the individual expresses that they are afraid of being removed to that country, DHS will refer them to U.S. Citizenship and Immigration Services ("USCIS") for a reasonable fear interview, to screen that person for protection against removal to that country. *Id.*

After the interview is conducted, USCIS will determine whether the individual would more likely than not be persecuted or tortured in the country of removal. *Id.* If USCIS finds that

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[5] 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 16, 2026, the U.S. Court of Appeals for the First Circuit granted the Government's motion for stay pending appeal. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-1393 (1st Cir. Mar. 16, 2026).

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the individual has met this standard, if the person was previously in removal proceedings, USCIS will inform ICE, and ICE can then file a motion to reopen with the Immigration Court. *Id.* Alternatively, ICE can also choose to designate another country of removal. If USCIS finds that the person has not met the standard, according to DHS policy, they will be removed. *Id.*

Accordingly, Petitioner's claims with respect to notice and the opportunity to be heard concerning fear of removal to a third country should be dismissed.

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. Pet., at 24-25.

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 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*,

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Petitioner here provides no evidence that his removal to any 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). ICE is presently exploring the availability of Petitioner's removal to Mexico and Canada, countries to which Petitioner himself specifically requested to be removed to. Jeon Decl., ¶ 43. There is nothing preventing Petitioner from filing a motion to reopen his prior removal proceedings based on a request for asylum, withholding of removal, or protection under CAT to any proposed third country. 8 C.F.R. § 1003.23(b)(4)(i).

Petitioner offers no evidence to conclude Petitioner is likely to suffer imprisonment or other serious harm in Mexico, Canada, or the United Kingdom, nor has he presented any evidence ICE is actively seeking to remove him to any other country to which he may face such harm. Petitioner's hypothetical assertions of future injury are too speculative to give rise to a threat of injury sufficient to establish Article III standing, as a claim resting on speculative and unsupported injury does not satisfy the case-or-controversy requirement. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) (The Court's jurisdiction is limited to "actual, ongoing cases or controversies."); *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). Without specific factual allegations establishing a realistic probability of punitive treatment in the proposed third country of removal, Petitioner's theory remains purely conjectural and nonjusticiable.

Therefore, Petitioner's punitive third country removal claim fails.

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D. Petitioner Fails to Establish Entitlement to Injunctive Relief.

Petitioner first asks this Court to enjoin Petitioner's release with a GPS monitor as a condition of his release. Pet. at 26, Prayer for Relief subsection (b)(ii).[6] Petitioner also 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, Prayer for Relief subsections (d)-(e). Finally, Petitioner seeks an injunction barring third-country removal. Pet. at 27, Prayer for Relief subsections (f)-(g).

1. Conditions of Release

Petitioner's request for a permanent injunction preventing ICE from requiring a GPS monitor as a condition of his release 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).

If it is determined that there is not a significant likelihood of removal in the reasonably foreseeable future, ICE may release a noncitizen subject to a final order of removal pursuant to an order of supervision ("OSUP"). 8 C.F.R. § 241.13(h). Under these circumstances, a noncitizen "shall be subject to supervision" which may include reasonable restrictions on the noncitizen's conduct and reporting requirements. 8 U.S.C. § 1231(a)(3); 8 C.F.R. § 241.4(j)(1).

The regulations specify that the conditions of supervised release are not limited to the requirements expressly outlined by the regulations. 8 C.F.R. § 241.5(a) (explaining "[t]he order shall specify conditions of supervision including, *but not limited to*" several enumerated requirements). ICE may condition release on the noncitizen's compliance with an Alternatives to

[6] In light of Petitioner's mental health condition and prior finding of incompetency, Federal Respondents have no objection to the condition that Petitioner be provided 24 hours' notice of the date and time of his release so that Petitioner's family can meet and travel with him back to California. Pet. at 26, Prayer for Relief subsection (b)(i).

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Detention ("ATD") program. *See* Hillel R. Smith, Cong. Rsch. Serv., R45915, Immigration Detention: A Legal Overview, at 31 n.208 (2019) (explaining that if a noncitizen is released pursuant to an OSUP, ICE may enroll the noncitizen pursuant to its ATD program, which typically involves supervision by a contracting service and electronic monitoring (e.g., GPS, telephonic reporting).

Petitioner has submitted no evidence to establish that he will suffer irreparable harm as a result of being ordered to wear a GPS ankle monitor. He asserts only that, given his mental health condition, GPS monitoring would be "difficult, if not impossible," and that "GPS monitoring would exacerbate his mental health symptoms." Pet., at 26, Prayer for Relief subsection (b)(ii). While Federal Respondents are sympathetic to Petitioner's condition, injunctive relief is an extraordinary remedy that requires something more than conclusory statements devoid of supporting evidence and speculation as to harm. *Winter*, 555 U.S. at 22 ("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 that the plaintiff is entitled to such relief.") (citation modified). As such, this request should be denied.

2. Third Country Removal

As explained above, Petitioner has failed to demonstrate a likelihood of removal to any third country wherein he would face imprisonment or other punishment upon arrival. Pet. at 27, Prayer for Relief subsection (g). Accordingly, he has failed to establish he is clearly entitled to injunctive relief on this basis. Similarly, Petitioner's request for injunctive relief barring his removal to a third country without notice and the opportunity to be heard is already covered by DHS policy. Pet. at 27, Prayer for Relief subsection (f).

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"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)).

On the facts presented here, the assertion that ICE would remove Petitioner without notice and the opportunity to be heard regarding any fear claim is purely conjectural. A mere hypothetical possibility of harm untethered to any evidence that removal to a country where Petitioner will face likely imprisonment or punishment is insufficient to establish the irreparable harm required to justify permanent injunctive relief. *Id.*

3. Re-Detention Restrictions

Subsection (d)-(e) 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). Pet. at 26-27.

For OSUP revocation, the 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).

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

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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. 8 C.F.R. § 241.13(i)(3) (requiring 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 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

[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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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 that is wholly 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 the Government bears an elevated "clear and convincing" evidentiary burden. Pet. at 26, Prayer for Relief, subsection (d).

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; and offering Petitioner the opportunity to challenge the third country removal. *See* Pet. at 26-27, Prayer for Relief, subsection (e). These requests do not comport with *Zadvydas* and are not

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required by any statute or regulation. Moreover, for the reasons stated above, Petitioner has not demonstrated he would be deprived of notice and the opportunity to be heard regarding any fear claim to the proposed third country of removal. ICE has indicated Petitioner and his counsel will be notified upon the identification of a suitable third country for his removal and given the opportunity to raise any fear claim that he may have to that country. Jeon Decl., ¶ 44. Petitioner has not, as of yet, raised any fear-based claim to the three countries ICE is currently seeking to remove him to. Jeon Decl., ¶ 42. Accordingly, this request for relief should be denied.

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 (b)(ii), (d)-(g). *See* Pet. at 26-27.

DATED this 9th day of April, 2026.

Respectfully submitted,

s/ Barbara Andrade
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I certify that this memorandum contains 4,694 words, in compliance with the Local Civil Rules.