District Judge Kymberly K. Evanson

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

RAHMATULLAH SAMADI, Petitioner, v. TODD BLANCHE,[1] *et al.*, Respondents.	Case No. 2:26-cv-01115-KKE FEDERAL RESPONDENTS'[2] RETURN MEMORANDUM Noted for Consideration: **April 22, 2026**

I. INTRODUCTION

This Court should deny Petitioner Rahmatullah Samadi's Petition for Writ of Habeas Corpus. *See* Dkt. 6 ("Pet."). Petitioner is a native and citizen of Afghanistan who is subject to a final order of removal as of December 7, 2023. U.S. Immigration and Customs Enforcement ("ICE") detains Petitioner under 8 U.S.C. § 1231(a)(6) following a direct encounter at the Pacific Highway Port of Entry near Blaine, Washington, where he had been refused entry into Canada. While the immigration court has granted Petitioner withholding of removal to Afghanistan, ICE

[1] Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute United States Attorney General Todd Blanche for Pamela Bondi.
[2] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

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.

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 that has not provided diplomatic assurances that it will not persecute or torture deportees, 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).

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

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

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

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

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

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

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

communications, travel document requests, or interviews with the home country. *Zadvydas*, 533 U.S. at 701. The noncitizen bears the initial burden to show "good reason" that removal is unlikely, after which the government must rebut with evidence of likely removal. *Id.*

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

B. Third Country Removal

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

C. Petitioner Rahmatullah Samadi

Petitioner is a native and citizen of Afghanistan who entered the United States without inspection or parole on or about June 1, 2023, at or near San Luis, Arizona. *See* Declaration of Barbara Andrade ("Andrade Decl."), Ex. A, Notice and Order of Expedited Removal. On June 9,

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

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

2023, DHS determined that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i) of the INA and issued him Notice and Order of Expedited Removal. Andrade Decl., Ex. A. On June 22, 2023, Petitioner raised a fear of removal to Afghanistan. *See* Declaration of Deportation Officer Jooseon Jeong ("Jeong Decl."), ¶ 5.

USCIS interviewed Petitioner on July 13 and July 18, 2023, regarding his fear of removal to Afghanistan. *Id.* ¶ 6. On July 20, 2023, USCIS determined Petitioner had raised a credible fear of removal and issued him a Notice to Appear ("NTA") which charged him as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i); Petitioner's expedited order of removal was vacated upon issuance of his NTA. *Id.* ¶ 6; Andrade Decl. Ex. B (NTA).

Petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589") and appeared for a final hearing on the merits of his application at the Eloy Immigration Court on December 7, 2023. Jeong Decl., ¶ 8. The immigration judge presiding over Petitioner's case denied his application for asylum and ordered him removed to Afghanistan but ordered that Petitioner's removal to Afghanistan be withheld under 8 U.S.C. § 1231(b)(3)(A). *Id.*; Andrade Decl. Ex. D (Order of the Immigration Judge). Both parties waived appeal of the immigration judge's decision. Jeong Decl., ¶ 8; Andrade Decl. Ex. D. Petitioner's removal order therefore became final on the date it was issued. Andrade Decl., Ex. D.

On January 31, 2024, Petitioner was released on an Order of Supervision ("OSUP") that included reporting requirements, among other conditions. Jeong Decl., ¶ 9; Andrade Decl., Ex. C (Notice of Custody Determination; Ex. F (OSUP). On July 6, 2025, DHS officials encountered Petitioner at the Pacific Highway Port of Entry in Blaine, Washington. Jeong Decl., ¶ 10. The Canadian Border Services Agency returned Petitioner to the United States after denying him entry to Canada. *Id.* On July 7, 2025, Petitioner was transferred to ICE custody and booked into the NWIPC. *Id.* ¶ 10.

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

On November 5, 2025, ICE began efforts to secure a travel document for Petitioner's removal to a third country. Jeong Decl., ¶ 11. On April 9, 2026, ICE conducted a post-order custody review. Jeong Decl., ¶ 11. Petitioner refused to participate in the custody review process. *Id.* On December 30, 2025, February 26, 2026, and April 3, 2026, ICE served Petitioner with Form I-229(a), Warning for Failure to Depart. Andrade Decl., Ex. E (Forms I-229(a)); Jeong Decl., ¶ 16.

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. Jeong Decl., ¶ 14. 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. *Id.* ¶ 15.

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).

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UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

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 then does the burden shift to the Government to demonstrate that removal remains reasonably foreseeable.[4] *Id.*

Petitioner's removal order became final on December 7, 2023, upon his waiver of appeal. Andrade Decl., Ex. D; 8 C.F.R. § 1241.1(b). Following the entry of his removal order, Petitioner remained in ICE custody until his release on January 31, 2024. Decl., ¶ 9. As Petitioner has been in ICE custody since July 7, 2025, he has now been detained for a cumulative period of more than six months following the entry of his final order of removal. Thus, Federal Respondents acknowledge that the presumptively reasonable six-month removal period has lapsed in the instant case.

However, Petitioner's removal has been frustrated, and his detention prolonged, due in part to his own actions. *See Pelich v. INS*, 329 F.3d 1057, 1062 (9th Cir. 2003); Andrade Decl., Ex. C. Petitioner's ongoing refusal to cooperate in identifying potential third countries for removal and failure to assist with travel document requests is at least part of the reason he remains in detention. The post-order removal period should therefore be extended until Petitioner complies with his statutory obligations to cooperate in the removal process. 8 U.S.C. §

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[4] Federal Respondents note Petitioner refused to participate in the April 9, 2026, file custody review process provided by regulation. 8 C.F.R. § 241.4(k)(1), (requiring ICE to conduct a custody review at the end of the statutory removal period (*i.e.*, ninety days), and a further review by a review panel at ICE headquarters after six months). Petitioner has therefore not exhausted his available administrative remedies, nor has he established a basis for a waiver of prudential exhaustion. *See Martinez v. Scott*, No. 2:25-CV-01538-TSZ-GJL, 2025 WL 2689844, at *6 (W.D. Wash. Aug. 27, 2025) (setting forth the standards for applying the prudential exhaustion doctrine), *report and recommendation adopted,* No. C25-1538 TSZ, 2025 WL 2689066 (W.D. Wash. Sept. 19, 2025).

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1231(a)(1)(C). Once he has complied, ICE "shall have a reasonable period of time in order to affect the [noncitizen's] removal." 8 C.F.R. § 241.4(g)(1)(ii).

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 22-25. 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, 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

[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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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

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 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.

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

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*, 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). While ICE is presently exploring the availability of Petitioner's removal to a third country, no such country has been identified. Jeong Decl., ¶¶ 14-15. As such, there is no basis to conclude Petitioner is likely to suffer imprisonment or other serious harm in the anticipated third country of removal, because one has not yet been identified.

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Consequently, 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. Accordingly, Petitioner's punitive third country removal claim fails.

D. Petitioner Fails to Establish Entitlement to Injunctive Relief.

Even if the Court were to grant Petitioner's release, it should not grant him the expansive injunctive relief he seeks. Pet. at 26-27, Prayer for Relief. Petitioner first asks this Court to 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," among other conditions. *Id.* at 26, Prayer for Relief subsections (d)-(e). Petitioner also seeks an injunction barring third-country removal without notice and a meaningful opportunity to respond, as well as an injunction barring third country removal to any country where he is likely to face imprisonment or other punishment upon arrival. *Id.* at 27, Prayer for Relief subsections (f)-(g).

1. Third Country Removal

Injunctive relief is "an extraordinary remedy that may only be awarded upon *a clear showing* that the plaintiff is entitled to such relief." *See Winter v. Natural Res. Def. Council, Inc.*,

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

555 U.S. 7, 24 (2008); *see also Flores Torres v. Hermosillo*, Case No. 2:25-cv-02687-LK, *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.'" *Flores Torres v. Hermosillo*, Case No. 2:25-cv-02687-LK, 2026 WL 145715, at *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)).

As explained above, Petitioner has failed to demonstrate a sufficient likelihood of removal to any third country wherein he would face likely imprisonment or other punishment upon arrival. Pet. at 27, Prayer for Relief subsection (g). 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 permanent injunctive relief. *Torres*, 2026 WL 145715, at *8.

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). 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. The mere assertion that ICE would remove Petitioner without proper notice or opportunity to be heard regarding any fear claim is insufficient to establish entitlement to permanent injunctive relief. *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). Accordingly, Petitioner has failed to establish he is clearly entitled to injunctive relief on these bases.

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(206) 553-7970

2. Re-Detention Restrictions

Subsection (d)-(e) in Petitioner's Prayer for Relief conflict with the post-order detention and removal scheme established by 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.

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 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). 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 3653724, at *4 (W.D. Wash. Dec. 17, 2025).[6] 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-

[6] 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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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

detention, provide constitutionally adequate process. 8 C.F.R. § 241.13(i); 8 C.F.R. § 241.4(l). Critically, 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.

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).

Furthermore, Petitioner asks this Court to enjoin Respondents from re-detaining him without: (1) first obtaining a travel document to a third country; (2) providing a travel document to him and his counsel; (3) offering Petitioner the opportunity to leave on his own within two

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700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

months and, (4) if Petitioner does not leave, if concrete arrangements have been made for him to be put on a flight to a third country in the reasonably foreseeable future. Pet. at 26, Prayer for Relief, subsection (e). These requests lack any statutory or regulatory basis and impermissibly infringe the Executive's prerogative over immigration matters. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (recognizing that "[t]he 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." (citation omitted)).

In circumstances where re-detention would be predicated on executing a final order of removal, requiring the Government to justify detention by clear and convincing evidence at a pre-detention hearing would inhibit the Executive's function of immigration enforcement, contrary to 8 U.S.C. § 1252(g). *See Thuraissigiam*, 591 U.S. at 112 (noting that "a major objective" of the Illegal Immigration Reform and Immigrant Responsibility Act was to protect the Executive's discretion from "undue interference by the courts.") (internal citation and quotation marks omitted). Per 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to … *execute removal orders* against any alien." 8 U.S.C. § 1252(g) (emphasis added).

The Ninth Circuit has made clear that § 1252(g)'s jurisdictional bar "does not include any temporal caveats." *Rauda v. Jennings*, 55 F. 4th 773, 777 (9th Cir. 2022) (holding that § 1252(g) bars any challenge to the discretionary decision to execute a removal order "[n]o matter how [a petitioner] frames it[.]"). That is, "'the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it. Both are covered by the statute.'" *Id.* (quoting *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020)). District courts within this Circuit, including this Court, have concluded that requests to delay or enjoin removal are barred

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

by § 1252(g). *See, e.g.*, *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765 (W.D. Wash. Mar. 5, 2026); *Makuey v. Scott, et al.*, No. 2:26-CV-00632-DGE, 2026 WL 925647, at *4 (W.D. Wash. Apr. 6, 2026). That is exactly what Petitioner seeks here; he asks this Court to prohibit ICE from executing his removal order unless additional procedures are provided. Such relief would directly interfere with the Executive's decision whether and when to execute the removal order. Thus, Petitioner's requests for an injunction conditionally delaying his re-detention are foreclosed by § 1252(g).

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

DATED this 17th day of April, 2026.

Respectfully submitted,

s/ Barbara Andrade
BARBARA ANDRADE, Fla. No. 1025074
Special Assistant United States Attorney
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4067
Email: barbara.andrade@usdoj.gov

Attorney for Federal Respondents

I certify that this memorandum contains 4,402 words in compliance with the Local Civil Rules.