Chief Magistrate Judge Theresa L. Fricke

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

PHOUVONG MANIVONG, Petitioner, v. MARKWAYNE MULLIN, *et al.*,[1] Respondents.	Case No. 2:26-cv-01123-TLF FEDERAL RESPONDENTS' RETURN MEMORANDUM Noted for Consideration: April 21, 2026

I. INTRODUCTION

This Court should deny Petitioner's Petition for a Writ of Habeas Corpus. Dkt. 1. Petitioner, a native and citizen of Laos with a final order of removal entered in 2012, was lawfully detained on March 20, 2026, pursuant to 8 U.S.C. § 1231(a), following the Government of Laos's issuance of travel documents on January 30, 2026. Petitioner received written notice of the revocation of his order of supervision, an informal interview on the same day he was taken into

[1] Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting United States Attorney General Todd Blanche for Pamela Bondi.

Pursuant to Fed. R. Civ. P. 25(d), Federal Respondents substitute Acting Seattle Field Office Director, U.S. Immigration and Customs Enforcement Julio Hernandez for Laura Hermosillo.

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

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custody, and notice of his imminent removal, all in accordance with applicable regulations. Petitioner's claims of procedural due process violations under the Fifth Amendment lack merit. His detention is authorized by statute, is of short duration (approximately 26 days as of the date of this filing), and is reasonably related to the Government's interest in executing a final removal order now that removal is imminent. The injunctive relief requested, immediate release, a permanent bar on any future detention absent additional pre-deprivation process, and a prohibition on electronic monitoring absent a clear and convincing evidence hearing, is not warranted under controlling law.

II. FACTUAL AND PROCEDURAL HISTORY

A. Detention Authority

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* Section 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 [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated:

> During the removal period, the [Secretary of Homeland Security][2] shall detain the [noncitizen]. Under no circumstance during the removal period shall the [Secretary]

[2] Although 8 U.S.C. § 1231(a)(2) refers to the "Attorney General" as having responsibility for detaining noncitizens, the Homeland Security Act of 2002, Pub. L. No. 107-296 § 441(2), 116 Stat. 2135, 2192 (2002), transferred this

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> release [a noncitizen] who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title.

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

Section 1231(a)(6) authorizes ICE[3] 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:

> [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 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 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'

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authority to the Secretary of the Department of Homeland Security ("DHS"), of which ICE is a component. *See also* 6 U.S.C. § 251.

[3] 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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conversely would have to shrink"). Thus, the Supreme Court implicitly recognized that six months is the *earliest* point at which a noncitizen's detention could raise constitutional issues. *Id*

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 alien bears the initial burden to show "good reason" that removal is unlikely, after which the government must rebut with evidence of likely removal. *Id.*

B. Petitioner Phouvong Manivong

Petitioner is a native and citizen of Laos. He adjusted to lawful permanent resident status on October 9, 1985, retroactive to May 17, 1984. Declaration of Lawrence Van Daley (Van Daley Decl.), Exhibit (Ex.) 5, Notice to Appear. On May 14, 2010, Petitioner was convicted in the Circuit Court for Multnomah County, Oregon, of two serious drug-trafficking offenses: delivery of 3,4-methylenedioxymethamphetamine in violation of Or. Rev. Stat. § 475.870, and delivery of cocaine in violation of Or. Rev. Stat. § 475.880(2) (Case No. 090531897). *Id*; Ex. 6, Form I-213. These aggravated felony convictions rendered him removable from the United States.

On December 14, 2011, the Department of Homeland Security issued Petitioner a Notice to Appear charging removability under 8 U.S.C. § 1227(a)(2)(A)(iii). Van Daley Decl., Ex. 5. After a merits hearing on January 3, 2012, an Immigration Judge ordered Petitioner removed to Laos and terminated his lawful permanent resident status. Van Daley Decl., Ex. 7, Removal Order. Petitioner waived appeal, and the removal order became final. *Id.* At that time, Laos could not or would not issue travel documents, so Petitioner was released from custody on an order of supervision ("OSUP") on April 4, 2012. Van Daley Decl., Ex. 8, OSUP.

More than thirteen years later, circumstances changed. On January 30, 2026, the Government of Laos issued valid travel documents authorizing Petitioner's return. Dkt. No. 10, Ex. 1, Travel Documents. On March 20, 2026, Petitioner was lawfully taken into custody to

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effectuate his long-pending removal. Dkt. No. 9, ¶ 3. On the same day, he received written notice of the revocation of his order of supervision, participated in an informal interview in which he was given the opportunity to respond and submit documents but declined to do so, and received written notice of his imminent removal to Laos. Dkt. No. 9, ¶ 4; Dkt. No. 10, Exs. 2, 3, 4. Petitioner has now been in custody for approximately 26 days.

III. LEGAL AUTHORITY

This Court has jurisdiction to entertain the Petition under the federal habeas statute, 28 U.S.C. § 2241(a) and (c)(3), which authorizes review of claims that an alien is "in custody in violation of the Constitution or laws or treaties of the United States." *Zadvydas v. Davis,* 533 U.S. 678, 687 (2001). However, the Petition fails on the merits. Petitioners' detention is lawful, and his claims of constitutional violations are without merit.

IV. ARGUMENTS

A. Petitioner's Detention Does Not Violate Procedural Due Process

Petitioner alleges that his re-detention on March 20, 2026, following more than thirteen years on an order of supervision, violates procedural due process and his right to continued liberty under the Fifth Amendment. Dkt. No. 1, ¶¶ 34-44. These claims are without merit. The procedures provided to Petitioner on the day of his detention fully satisfy the requirements of the Due Process Clause, and his short-term detention pending removal is both statutorily authorized and constitutionally permissible.

The Supreme Court has long recognized that the Due Process Clause protects "freedom from imprisonment, from government custody, detention, or other forms of physical restraint." *Zadvydas*, 533 U.S. at 690. However, once a final order of removal has been entered, the noncitizen's liberty interest is substantially diminished because he "no longer has a right to remain in the United States." *Id.* at 690-91. In this context, Congress has mandated detention during the

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removal period to ensure the alien's presence for removal. 8 U.S.C. § 1231(a)(2); *Demore v. Kim*, 538 U.S. 510, 531 (2003) (acknowledging the Government's strong interest in preventing flight and securing removal).

To assess whether the Government provided adequate process before re-detaining Petitioner, the Court applies the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). That test requires consideration of (1) the private interest affected by the official action, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards, and (3) the Government's interest, including the fiscal and administrative burdens that additional procedures would impose.

First, Petitioner's private interest in avoiding physical restraint is significant but sharply limited by the existence of his final removal order and his aggravated felony convictions. *Zadvydas*, 533 U.S. at 690-91. These facts reduce the weight afforded to his liberty interest compared to that of an individual not subject to a final order of removal.

Second, the procedures employed created only a minimal risk of erroneous deprivation, and any additional formal process would have provided little additional value. On March 20, 2026, the very day Petitioner was taken into custody, he received written notice of the revocation of his order of supervision, an informal interview during which he was afforded a full opportunity to respond to the reasons for revocation (the material change in circumstances caused by Laos issuing travel documents), and written notice of his imminent removal. *See* 8 C.F.R. § 241.4(l)(1)-(3). Petitioner was expressly invited to submit a written statement and supporting documents but chose not to do so. These regulatory procedures supplied him with timely notice and a meaningful opportunity to be heard precisely when the triggering event for revocation occurred. The core fact supporting re-detention, the recent issuance of valid travel documents, is objective and not

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reasonably disputable. *See Mathews*, 424 U.S. at 343-45 (noting that additional procedures add little value when the underlying facts are straightforward).

Third, the Government's interest strongly supports the process used. With a final removal order in place and travel documents now secured, the Government has a compelling interest in promptly detaining Petitioner to effectuate removal within the 90-day statutory period. 8 U.S.C. § 1231(a)(1)(A)-(2). Requiring a more formal pre-deprivation hearing in every instance of supervision revocation would impose substantial administrative burdens and frustrate Congress's directive to remove aliens expeditiously once removal becomes feasible. *See Zadvydas*, 533 U.S. at 690-91. The balance of the *Mathews* factors therefore weighs decisively in favor of the procedures provided. This conclusion is consistent with recent decisions in this District addressing nearly identical claims involving revocation of supervision after Laos issued travel documents. *See Saechao v. Scott*, No. 2:26-cv-00548-TMC, slip op. at 5-10 (W.D. Wash. Mar. 25, 2026) (denying habeas petition where petitioner received notice and an opportunity to respond upon detention triggered by issuance of Laotian travel documents, finding the process satisfied due process given imminent removal).

Petitioner's separate claim that his detention violates his substantive "right to continued liberty" likewise fails. Substantive due process is not violated when detention is reasonably related to a legitimate governmental purpose and is not indefinite. *Zadvydas*, 533 U.S. at 690. Here, Petitioner's detention serves the legitimate purpose of executing his final removal order, began only 26 days ago, and falls squarely within the presumptively reasonable 90-day removal period. Because removal is now reasonably foreseeable following the issuance of travel documents, the detention is neither arbitrary nor excessive. *Id.* at 699-701.

Petitioner received constitutionally adequate process, and his continued detention pending imminent removal does not violate the Fifth Amendment

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B. Petitioner Is Not Entitled to Preliminary Injunctive Relief

Petitioner asserts that his continued detention causes him irreparable injury sufficient to justify immediate release. Dkt. No. 1, ¶¶ 53-55. This claim is legally insufficient and must be rejected.

Petitioner's request for immediate release constitutes along with request for stay of removal are a request for preliminary injunctive relief in the habeas context, which is governed by the traditional four-factor equitable test. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (a plaintiff seeking preliminary injunctive relief must establish (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest). When the opposing party is the government, the third and fourth factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner cannot satisfy the second factor, likelihood of irreparable harm.

Irreparable harm must be likely, not merely possible. *Nken*, 556 U.S. at 434-35. The Supreme Court has expressly held that the ordinary burdens associated with removal (or, by extension, brief lawful detention pending removal) do not, standing alone, constitute the requisite irreparable injury. *Id.* at 435 ("[T]he burden of removal alone cannot constitute the requisite irreparable injury."). This principle applies with even greater force here, where Petitioner seeks release from statutorily authorized post-removal-order detention rather than a stay of removal itself.

Petitioner's detention is lawful, of extremely short duration, and directly tied to the Government's statutory duty to execute a final removal order now that Laos has issued valid travel documents. *See* 8 U.S.C. § 1231(a)(1)-(2). Lawful detention pending imminent removal does not inflict irreparable harm; any temporary restriction on liberty is the precise consequence

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Congress contemplated when it mandated detention during the removal period. *See Zadvydas*, 533 U.S. at 690-91 (detention "pending removal" serves a legitimate governmental purpose and does not violate due process when removal remains reasonably foreseeable). Petitioner offers no evidence of any unique or extraordinary harm, such as a serious medical condition, credible fear of persecution upon removal, or interference with access to counsel, that would elevate his situation beyond the ordinary incidents of lawful custody. *Cf. Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing that prolonged immigration detention can impose significant costs, but only in the context of weighing equities where detention is not statutorily mandated or where removal is not imminent).

Moreover, immediate release would affirmatively harm the Government's interests by frustrating the execution of a final, un-appealed removal order and undermining Congress's intent that aggravated felons with final orders be detained during the removal period. The balance of equities and public interest therefore weigh strongly against release. *See Nken*, 556 U.S. at 435 (when the government is the opposing party, the public interest and governmental injury factors merge and strongly favor enforcement of immigration laws). Petitioner's generalized assertion of irreparable injury from lawful, short-term detention is insufficient as a matter of law to overcome these factors or to justify the remedy of habeas release.

C. Petitioner Is Not Entitled to the Extraordinary Injunctive Relief Requested

Petitioner seeks two forms of permanent injunctive relief: (1) immediate release coupled with a permanent bar on any future detention during removal proceedings absent written notice and a clear-and-convincing-evidence hearing on flight risk, danger, and alternatives to detention; and (2) a permanent prohibition on placement of a GPS ankle monitor upon any release. Dkt. 1, Prayer for Relief. Neither is warranted. Dkt. No. 1, Prayer for Relief.

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First, the requested pre-deprivation hearing requirement is not compelled by the Constitution in the post-removal-order context. As explained above, the regulatory process of written notice plus an informal interview satisfies *Mathews* balancing, especially where changed circumstances now make removal imminent. A permanent injunction mandating additional procedures for every future revocation would improperly interfere with the Executive's statutory duty to remove aliens with final orders. *See* 8 U.S.C. § 1231(a)(1)-(2).

Second, there is no constitutional or statutory basis for requiring a clear-and-convincing-evidence hearing before imposing electronic monitoring as a condition of release under an order of supervision. Post-removal-order supervision is governed by 8 U.S.C. § 1231(a)(3), which authorizes the Secretary to impose conditions "as may be prescribed by the Secretary." Electronic monitoring is a common, less-restrictive alternative to detention that does not trigger the heightened due-process protections Petitioner demands. *See Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (discussing alternatives to detention in the pre-order context and noting that monitoring serves legitimate governmental interests without requiring a clear-and-convincing standard). Petitioner's request for such sweeping prospective relief should be rejected.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the Petition for Writ of Habeas Corpus in its entirety, decline to order Petitioner's release, and deny all requested injunctive relief. The Government stands ready to effectuate Petitioner's removal to Laos as soon as travel arrangements are finalized.

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DATED this 16th day of April, 2026.

Respectfully submitted,

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I certify that this memorandum contains 2,785 words, in compliance with the Local Civil Rules.