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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

CHA, Sanit Va,

Petitioner,

v.

Bruce SCOTT, et al.

Respondents.

) Civil Case No.: 2:26-cv-01137-TLF
)
)
) **PETITIONER'S TRAVERSE TO**
) **FEDERAL RESPONDENT'S RETURN**
) **MEMORANDUM**
)
) Noted for Consideration: April 17, 2026
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I. INTRODUCTION

Petitioner, Mr. Sanit Va Cha, requests that the Court grant habeas relief to remedy Respondents' violation of his due process rights, resulting in the ongoing period of civil detention. He has challenged his underlying removal order in a robust motion to reopen his removal proceedings, now pending with the Portland Immigration Court, and the immigration judge recently granted a stay of his removal on April 13, 2026. Dkt. 15, Ex. 1; *see also* Dkt. 1, Ex. 2. Petitioner's imminent removal is therefore no longer reasonably foreseeable under the post-order regulations, eliminating the legitimacy of his OSUP's revocation. *See* 8 C.F.R. § 241.13(i)(2). Moreover, contrary to Respondents' assertions, he has never violated his OSUP – that basis cannot serve to justify his re-detention. 8 C.F.R. § 241.13(i)(1); Dkt. 8. (Decl. of Kenny Britt).

Petitioner's custody fundamentally violates his Fifth Amendment due process rights as it failed to provide him with a meaningful pre-deprivation hearing. He has had no new criminal charges nor conviction since his initial release on supervision in 2003. Nothing has changed in 23 years which followed; there is no conceivable basis for stating he has somehow become a flight risk or danger to the community in 2026. Beyond broadly referencing § 241.13, Respondents have offered no reason in this litigation why Petitioner's detention is *now* necessary, without any other alternative; 8 C.F.R. § 241.13(i)(2) does not mandate detention when revocation of a prior OSUP is warranted (“[t]he Service **may** revoke an alien's release . . . if, on account of changed circumstances, the Service determines that a significant likelihood of removal in the reasonably foreseeable future”) (emphasis added). The regulation makes detention a fundamentally discretionary decision, one which is subject to the mandate of constitutional due process.

1 **II. ARGUMENT**

2 **a. Petitioner's Continued Detention Violates his Fifth Amendment Right to**
3 **Due Process.**

4 Respondents argue that Petitioner's claim under *Zadvydas v. Davis*, 533 US. 678
5 (2001), should fail since he cannot carry the burden to demonstrate his removal is not
6 reasonably foreseeable pursuant to 8 C.F.R. §241.13(i)(2). Dkt. 7, p. 8. However, on April 13,
7 2026, an immigration judge in Portland, Oregon granted his motion to stay removal, filed
8 concurrently with a motion to reopen. Dkt. 15.-1. This materially changes the circumstances of
9 Petitioner's case, such that his imminent removal is no longer reasonably foreseeable.

10 Beyond this, Respondents appear to argue that Petitioner's detention on March 27,
11 2026 is mandatory by citing to 8 U.S.C. § 1231(a)(2). Dkt. 7, p. 7. The statute, however,
12 provides that only during the 90-period after the removal order becomes administratively final
13 does the statute mandates detention. 8 U.S.C. § 1231(a)(1)(B)(i); *see also Tran v. Bondi*, No.
14 CV-25-01897-JLR, 2025 WL 3140462 (W.D. Wash Nov. 10, 2025), at *4-6 (holding that the
15 reasonable period of detention does not reset each time a noncitizen is detained; finding that a
16 similarly situated post-order noncitizen was entitled to notice and opportunity to respond
17 before his Order of Supervision was revoked). Petitioner notes that 8 U.S.C. §
18 1231(a)(1)(B)(ii) is not invoked since his removal order has not yet been judicially reviewed.

19 The regulation guiding detention of an alien with a final order of removal and who has
20 been released on an OSUP is at 8 C.F.R. § 241.4, which provides in part, "[r]elease *may* be
21 revoked in the exercise of discretion when, in the opinion of the revoking official . . . [i]t is
22 appropriate to enforce a removal order or to commence removal proceedings[.]" 8 C.F.R. §
23 241.4(1)(2) (emphasis added). This language clearly does not mandate detention. Petitioner's re-
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1 detention should rest on an individualized, discretionary assessment. *See Vang v. Scott, et. al*, No.
2 C26-690-MPL, 2026 WL 776149 (W.D. Wash. March 19, 2026), at *5.

3 Respondents do not meaningfully address why a discretionary revocation of release for
4 a post-order noncitizen shouldn't require a meaningful pre-deprivation hearing, which has been
5 mandated by several recent decisions of this Court. *Van at *5; see also Khim v. Bondi*, 2025
6 WL 3653724 (W.D. Wash. Dec. 17, 2025), at *4; *Wana v. Bondi*, 2025 WL 3628634 (W.D.
7 Wash. Dec. 15, 2025), at *4-5; *Doua Yang v. Scott*, No 2:26-cv-00469-JWN, 2026 WL 632661
8 (W.D. Wash. March 6, 2026). The rely on *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026
9 WL 626765, (W.D. Wash. Mar. 5, 2026) to support the argument in favor of mandatory
10 detention; however, the granting of a stay of removal acutely changes the analysis.

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12 Petitioner thus reasserts that all *Mathews* factors weigh in his favor, and that the
13 arguments advanced by Respondents are in error. Dkt. 7, p. 9-14. Respondents are wrong in
14 that the assertion of liberty interests under Fifth Amendment do not apply fully to noncitizens.
15 *Id.* at 10. Due process protections extend to all persons within the United States, regardless of
16 immigration status. *Zadvydas*, 533 U.S. at 693. This Court has also previously “reject[ed] the
17 notion” that a noncitizen in immigration proceedings has a diminished liberty interest from that
18 of a U.S. citizen. *See Safi v. Noem, et. al*, No. 2:26-cv-00308-TLF, 2026 U.S. Dist. LEXIS
19 32091, at *6 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992))

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21 Petitioner's interest in remaining out of custody, after living in the United States for 48
22 years and being on Order of Supervision for nearly two decades, is substantial. *Zadvydas*, 533
23 U.S. at 690; *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. Sept. 12,
24 2025). The government's “release of [an] individual from custody creates ‘an implicit promise’
25 that the individual's liberty will be revoked only if they fail to abide by the conditions of their
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1 release.” *See, e.g., Calderon v. Kaiser*, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025)
2 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Petitioner has lived in the Pacific
3 Northwest since he was a four-year-old child refugee, including decades after his removal
4 order became final; he has an elderly U.S. citizen father with very serious health conditions
5 (who worked with the CIA no less), five U.S. citizen children, and has complied with ERO
6 check-ins and all conditions to his supervision over the years since his release from prison.

7 Respondents state that, “[w]hen an alien has violated any condition of their release, as
8 Petitioner did through his criminal activity . . . ICE is clearly permitted to revoke the OSUP
9 and take the alien into custody.” Dkt. 7, p. 11. This is patently false. Petitioner never violated
10 his OSUP through the commission of new crimes. It should be further noted that Respondent
11 misstate his criminal history as being convicted of Assault I. Dkt. 7, p. 4. He was convicted
12 solely of Unlawful Use of a Weapon under ORS 166.220(b) and Assault II under ORS 163.175
13 as a lesser included offense. Exh. “A,” p. 2. This is also misstated in the sworn declaration of
14 the deportation officer. Dkt. 8, p. 2. The 1997 convictions arose from a single criminal act.
15 Regardless, they are irrelevant as they were considered previously by ICE 23 years ago, when
16 it chose to release Petitioner on OSUP.
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18 Thus, the first factor weighs heavily in Petitioner’s favor.
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20 Second, the risk of erroneous deprivation weighs in Petitioner’s favor. His initial
21 release was premised on his lack of flight or security risk, and Respondents have not
22 meaningfully suggested that determination has changed. In addition, in his motion to reopen
23 with the immigration court, Petitioner has raised issues relating to the validity of his removal
24 order, changed country conditions, and the Convention Against Torture. Dkt. 1, Ex. 2. The
25 immigration judge ordered a stay of removal as of April 14, 2026. Dkt. 15, Ex. 1. These issues
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1 undoubtedly bear on the discretionary decision to detain Petitioner based on a changed
2 likelihood of removal. Yet, he was not permitted an opportunity to raise these issues prior to
3 his detention and was not afforded a meaningful interview or opportunity to consult with
4 counsel before taken into custody on March 27, 2026.

5 Third, although the government has legitimate interests in enforcing the immigration
6 laws and ensuring one's appearance at proceedings, Respondents identify no concrete way in
7 which providing a short, pre-deprivation custody hearing before revoking an existing OSUP
8 would materially impede those interests. Custody and bond hearings already occur regularly
9 within the existing immigration system, and courts have repeatedly found that the incremental,
10 administrative burden of such hearings modest relative to the risk and consequences of
11 erroneous detention. *See, e.g., E.A. T.-B.*, 795 F. Supp. 3d at 1324; *Ortega v. Bonnar*, 415 F.
12 Supp. 3d 963, 970 (N.D. Cal. 2019). On this record, Respondents have not shown exigent
13 circumstances – i.e., an immediate, specific danger, or imminent flight – that would make a
14 pre-deprivation process impracticable. The third *Mathews* factor therefore also favors
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16 Petitioner.

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18 Respondents additionally rely on *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022),
19 for the proposition that the Court has no jurisdiction to prevent or delay a removal to Laos on
20 the basis of a pending petition for review, absent a stay. Dkt. 7, p. 13. By its own terms, this
21 argument is now inapplicable since the immigration judge has granted a stay of removal. Dkt.
22 15, Ex. 1.

23 III. CONCLUSION

24 Balancing all three *Mathews* factors, Petitioner argues that Respondents' re-detaining
25 him was unlawful. Habeas relief is therefore warranted. Release should be an appropriate and
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1 constitutionally mandated remedy. This conclusion aligns with a broad consensus among
2 district courts nationwide. *See, e.g., E.A. T.-B.*, 795 F. Supp. 3d at 1324; *J.Y.L.C. v. Bostock*,
3 2025 WL 3169865, (D. Or. Nov. 12, 2025), at *2; *Zhu v. Genalo*, 798 F. Supp. 3d 400, 415
4 (S.D.N.Y. 2025). Here, Petitioner's life and liberty depend on having time to address his legal
5 situation, both because he is pursuing substantive claims in the reopening of his removal order
6 and because of the likely harm that he will suffer if deported to Laos. Credible country
7 reporting suggests the possibility of prolonged, arbitrary imprisonment in a country that will
8 deny him the rights and protections of citizenship and subject him to other forms of harm.
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11 Dated: April 15, 2026.

Respectfully submitted,

12 /s/ Benjamin Cornell

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21 *I certify that this memorandum contains 1,769*
22 *words.*
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