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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

O.S.S.,

Petitioner,

v.

JULIO HERNANDEZ, et al.,

Respondents.

Case No. 3:26-cv-796-IM

RESPONDENTS' RESPONSE TO PETITIONER'S BRIEF ON JURISDICTION

Respondents, through counsel, submit this brief in response to Petitioner's brief on jurisdiction.

INTRODUCTION

In asserting the Court has jurisdiction to hear this Petition, Petitioner claims to not challenge the validity of his lawful removal order or even the decision to execute it. Rather, Petitioner claims to only challenge the "manner" in which detention and removal will take place, speculating that Respondents will not provide him with certain procedural protections in revoking his OSUP, including protections not contemplated by the Constitution, statutes, or regulations. And while Petitioner's barebones petition ostensibly challenges the process in which his OSUP will be revoked, his motion for a temporary restraining order makes clear that the reason for challenging these procedures is that he is not ready to be removed yet. Challenges to whether and when to execute a removal order are plainly barred by 8 U.S.C. § 1252(g). *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). Accordingly, this Court is without jurisdiction to hear Petitioner's claims and must dismiss the Petition.

BACKGROUND

Petitioner, a former lawful permanent resident born in Laos, was convicted in 2014 for Unlawful Delivery of Methamphetamine, in violation of ORS § 475.890(2). Kartchner Decl., Ex. 1 at 1. Due in part to that conviction, an immigration judge denied Petitioner's applications for asylum, withholding of removal, and protection under the Convention Against Torture and ordered Petitioner removed to Laos on

April 8, 2019. *Id.* at 8. In lieu of detention, Petitioner was apparently[1] released on an Order of Supervision (OSUP). ECF 1-1 at ¶ 3.

In 2026, DHS obtained a travel document for Petitioner from the Government of Laos. Kartchner Decl., Ex. 2. DHS scheduled a check-in appointment for Petitioner on April 23, 2026, at which DHS intended to revoke Petitioner's Order of Supervision, consistent with the relevant statutes and regulations, and take Petitioner into custody to execute Petitioner's removal order. ECF 4. One day before that appointment, on April 22, 2026, Petitioner filed the present Petition for a Writ of Habeas Corpus.

On April 23, 2026, Petitioner filed a motion for a temporary restraining order to prevent DHS from detaining Petitioner or moving him from the District of Oregon. ECF 5. The same day, the Court ordered Respondents to file documentary evidence of Petitioner's removal order and travel document. ECF 6. Respondents filed those documents with the Court that same day. ECF 8. The Court also ordered Petitioner to file a supplemental brief addressing the Court's jurisdiction and allowed Respondents to file a brief in response. ECF 6. Petitioner timely filed his brief on jurisdiction, and Respondents now file this brief in response.

DISCUSSION

Under 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause

[1] Because of the expedited posture of this case, undersigned counsel has not yet verified the full history of Petitioner's detention or release on OSUP. Some facts herein are derived from the Petition and assumed true in this expedited posture.

or claim by or on behalf of any alien arising from the decision or action by the Attorney General to...execute removal orders." The Supreme Court has explained that § 1252(g) "was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). The Court has further explained that while § 1252(g) does not cover "all or nearly all deportation claims," it does apply to the Government's decisions to execute removal orders. *Id.* at 479, 482.

The Ninth Circuit has further explained that the executive's decision of *when* to execute a removal order is also unreviewable. In *Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022), the court held that § 1252(g) stripped jurisdiction from district courts to enjoin removal while a noncitizen seeks to reopen immigration proceedings. The court explained that the executive's discretion to execute removal orders necessarily includes the discretion to decide both "whether" and "when" removal occurs. *Id.*

The Third, Sixth, and Seventh Circuits have similarly held that § 1252(g) bars habeas petitions seeking to prevent removal until the petitioner can pursue relief from a removal order. *Tazu v. Att'y Gen. of the United States*, 975 F.3d 292, 297 (3d Cir. 2020)); *Hamama v. Adducci*, 912 F.3d 869, 873 (6th Cir. 2018); *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021).

Several district courts within the Ninth Circuit have followed suit, ruling that requests to delay removal so that habeas petitioners may contest their removal orders

or wrap up their affairs are barred by § 1252(g). *See, e.g.*, *Saelee v. Hernandez*, No. 2:26-CV-00735-TL, 2026 WL 1045223 (W.D. Wash. Apr. 17, 2026); *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765 (W.D. Wash. Mar. 5, 2026); *Aleman v. Bondi*, No. 2:25-CV-02346-JNW, 2026 WL 102457 (W.D. Wash. Jan. 14, 2026); *but see M.S.L. v. Bostock*, No. 6:25-CV-01204-AA, 2025 WL 2430267, at *7 (D. Or. Aug. 21, 2025) (holding that § 1252(g) does not bar review of claims involving "the lack of process surrounding [the petitioner's] detention"); *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *3 (W.D. Wash. Dec. 19, 2025) (same).

For example, in *Saelee*, the Western District of Washington considered a petition similar to the one at issue here, holding that § 1252(g) stripped the court of jurisdiction to grant a habeas petition involving two Laotian noncitizens with removal orders. 2026 WL 1045223 at *4–5. There, the petitioners argued that they were not challenging their removal orders but rather seeking "procedural protection against inappropriate and unlawful detention." *Id.* at *3. Specifically, petitioners sought an order requiring DHS to give them at least six months' notice before arresting them for removal so that they could make preparations to "fight their removal" and "wrap up their affairs with their families." *Id.* at *4. In light of this request for relief, the Court concluded that, in reality, the petitioners were challenging "the timing of execution of removal, not the fact or process of detention." *Id.* Noting that the law does not require "even one month's notice" before OSUP may be revoked, the court held that it did not have jurisdiction under § 1252(g) to "interfere

with *when* Respondents can execute a removal order." *Id.* (emphasis in original).

Here, as in *Rauda* and *Saelee,* the crux of Petitioner's claims is that he wants to delay removal so that he can contest his removal order and get his affairs in order. Petitioner has a valid removal order and a travel document that expires next week, and he is on notice that DHS intends to execute the removal order. Since Petitioner claims to not be challenging his removal order or its execution, the only thing Petitioner appears to be asking for is for DHS to delay his detention and removal. Indeed, Petitioner argues that DHS is required to give "notice sufficient to provide Petitioner time to seek legal relief and get his affairs in order" and that such notice would protect his "ability to pursue claims to relief from deportation." ECF 5 at 7. Petitioner likewise argues that the recent change in circumstance allowing for aliens to be deported to Loas "require[s] the opportunity to claim protection in immigration court against removal to a country where he may be persecuted or tortured." *Id.* at 11; *see also, id.* ("[H]e cannot reopen removal proceedings if the Government spirits him away with no notice before he can do so."); *id.* at 12 ("Notice cannot be 'last minute' because that would deprive an individual of a meaningful opportunity to apply for fear-based protection from removal."). This desire for a delay in the removal process while Petitioner seeks to overturn his removal order and arrange his affairs is indistinguishable from the relief sought in *Rauda* and *Saelee.* Petitioner's claim is barred by § 1252(g).

Petitioner claims that § 1252(g) does not apply because he does not challenge

his removal order, only the "manner" in which it is executed. ECF 7 at 1, 3; ECF 5 at 2. But even a cursory reading of Petitioner's filings reveals that by "manner," Petitioner means "timing." *See, e.g.*, ECF 5 at 7 ("At a minimum, Petitioner requires time to make accommodations for his medical care in the event he must be removed."); *id.* at 4 ("Respondents' decision to arrest and incarcerate Petitioner with less than 24 hours notice is arbitrary and capricious."); *id.* at 7 ("Petitioner's sudden detention without any notice at all hobbles any chance of Petitioner having the time or ability to seek any protection against removal."); *id.* at 8 ("The cure for the Government's violations of Petitioner's procedural due process rights is maintenance of the status quo and Petitioner's continued release from custody with sufficient time to pursue claims to relief from removal."); *id.* ("this time will enable Petitioner to prepare for his deportation to Laos in a manner that preserves his health and well-being and does not threaten his life"); *id.* at 12 ("There must be time to prepare and present relevant arguments and evidence and to seek reopening of their removal case."); *id.* at 13 ("there was no time to seek to reopen removal proceedings and pursue a claim for withholding of deportation"). But challenges to *when* DHS choses to execute a removal order are precisely what § 1252(g) forbids courts from reviewing. *Rauda*, 55 F.4th at 777.

Several of the cases Petitioner cites for the proposition that "courts in this circuit have consistently found they have jurisdiction over, and granted injunctive and habeas relief in, cases involving similarly situated petitioners," ECF 7 at 4–5, are

not helpful. One declined to reach the §1252(g) question. *Sayaseng v. Scott*, No. 2:26-CV-00476-RAJ, 2026 WL 972725, at *6 (W.D. Wash. Apr. 10, 2026). Another found jurisdiction under § 1252(g) to review claims that DHS did not comply with its regulatory requirements in revoking his OSUP, something Petitioner cannot credibly allege here since DHS has not yet revoked OSUP. And a third did not address § 1252(g) at all. *Somsanuk v. Bondi*, No. C26-48-MLP, 2026 WL 221139, at *2 (W.D. Wash. Jan. 28, 2026). These cases shed no light on the meaning of § 1252(g) or how it would apply in this case.

Petitioner has a valid removal order and a travel document. It is within DHS's discretion to execute that removal order soon, before the travel document expires. These are precisely the discretionary decisions § 1252(g) was designed to protect from judicial review. *Rauda*, 55 F.4th at 777–78. Allowing noncitizens to halt the execution of their removal orders so they can demand advanced notice of removal—notice not required by the statute or regulations—would make it substantially more difficult for DHS to effectuate removal orders, especially where, as here, the travel document has an expiration date. Section 1252(g) bars such interference. Therefore, this Court is without jurisdiction to hear Petitioner's claims.

CONCLUSION

Respondents therefore respectfully request that the Court find it has no

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jurisdiction to adjudicate Petitioner's claims and deny his motion for a temporary restraining order and his Petition for a Writ of Habeas Corpus.

DATED this 24th day of April, 2026.

Respectfully Submitted,

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