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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

N-S-,

Case No. 3:26-cv-01219-IM

Petitioner,

**RESPONDENTS' BRIEF ON
JURISDICTION**

v.

JULIO HERNANDEZ, et al.,

Respondents.

Respondents, through counsel, submit this brief in compliance with the Court's June 17, 2026, order. ECF 3.

BACKGROUND

According to the Petition,¹ Petitioner is a former lawful permanent resident who was convicted in 2002 for Delivery of a Controlled Substance (Marijuana). ECF 1 ¶¶ 1, 8. On August 29, 2005, the Department of Homeland Security ("DHS") served Petitioner with a Notice to Appear ("NTA") charging Petitioner with being removable under 8 U.S.C. § 1227(a)(2)(A)(iii) for being convicted of an aggravated felony. *Id.* ¶ 8; Kartchner Decl., Ex. A (NTA). On September 2, 2005, an immigration judge ordered Petitioner removed to Laos. Kartchner Decl., Ex. B (Removal Order). According to the Petition, Petitioner was then detained but later released on an Order of Supervision ("OSUP"). ECF 1 ¶¶ 2–3.

In May of 2026, DHS obtained a travel document for Petitioner from the Government of Laos. Kartchner Decl., Ex. C (Travel Document). According to the Petitioner, on June 9, 2026, DHS sent Petitioner a "call-in letter," requesting that Petitioner come to the Immigration and Customs Enforcement ("ICE") office on June 23, 2026. ECF 1 ¶ 5. Petitioner filed this Petition on June 16, 2026. ECF 1.

On June 17, 2026, the Court ordered Respondents to file a notice containing three things: (1) documentary evidence of Petitioner's final removal order and

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

Petitioner's travel document, (2) where the government intends to remove Petitioner, and (3) a short response addressing this Court's jurisdiction.

Respondents now file this brief, along with redacted copies of the Notice to Appear, removal order, and travel document. DHS has represented to the undersigned that DHS plans on removing Petitioner only to Laos at this time.

DISCUSSION

I. **8 U.S.C. § 1252(g) strips this Court of jurisdiction to hear Petitioner's requests to delay his removal while he contests his removal order.**

Under 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.” 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., O.S. S. v. Hernandez*, No. 3:26-CV-00796-IM, ECF 12 (D. Or. April 27, 2026); *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. The primary thing Petitioner appears to be asking for is for DHS to delay his detention and removal. Indeed, the Petition makes clear that Petitioner intends to challenge the validity of the removal order in immigration court, to seek relief in reopened immigration proceedings, and to seek post-conviction relief for his underlying criminal conviction. ECF 1 ¶¶ 8, 82; *see also id.* ¶ 153 (noting that Petitioner’s “motion to reopen [is] likely to be granted”). In short, Petitioner’s claims amount to a desire for a delay in the removal process while Petitioner seeks to overturn his removal order, claims that are indistinguishable from the relief sought in *Rauda* and *Saelee*. Petitioner’s claim is barred by § 1252(g).

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, and Petitioner's avenue for avoiding removal while he challenges his removal order is a stay of removal in immigration proceedings. Therefore, this Court is without jurisdiction to hear Petitioner's claims.

II. 8 U.S.C. § 1252(a)(2)(C) strips this Court of jurisdiction to hear Petitioner's claims based on his criminal convictions.

Congress made clear that district courts do not have jurisdiction to “to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section . . . 1227(a)(2)(A)(iii) [for an aggravated felony conviction].” 8 U.S.C. § 1252(a)(2)(C).

Petitioner here explicitly asks the Court to declare Petitioner's removal order “invalid” and that Respondents have no “authority to detain or remove him on the basis of a conviction that does not carry aggravated felony consequences.” ECF 1 at 43. Respondents acknowledge that Petitioner's conviction for Delivery of Marijuana may no longer be an aggravated felony, *Maldonado v. Barr*, 978 F.3d 643 (9th Cir.

2020), *Sandoval v. Sessions*, 866 F.3d 986 (9th Cir. 2016). But that is an issue that Petitioner must raise in immigration proceedings, not the district court.²

III. 8 U.S.C. §§ 1252(a)(4) and (5) strip this court of jurisdiction to hear Petitioner’s claims related to the United Nations Convention Against Torture and other challenges to the removal order.

In addition to the provisions explained above, Congress also made clear that challenges to a removal order must be made through the “petition for review process.” 8 U.S.C. § 1252(a)(5). Here, as explained above, the Petition explicitly requests that this Court declare his removal order invalid. ECF 1 at 43. Again, that is an issue that Petitioner must raise with the immigration court through a motion to reopen, not the district court. *See also* 8 U.S.C. § 1252(d) (“A court may review a final order of removal only if . . . the alien has exhausted all administrative remedies available to the alien as of right . . .”).

Congress also decided that district courts are not to review “any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment” except in limited circumstances not at issue here. 8 U.S.C. § 1252(a)(4). Such claims must be brought through the “petition for review” process. *Id.* Here, Count Three of the Petition claims that under the Convention Against Torture, Respondents must give notice before removing him

² Although Petitioner’s conviction may no longer be an aggravated felony, it is not clear in this expedited posture whether Petitioner’s motion to reopen will be granted. Even meritorious motions to reopen may be denied if they were filed past the 90-day deadline, and even where tolling applies, movants must show due diligence in pursuing relief. 8 U.S.C. § 1229a(c)(7)(C)(i); *Avagyan v. Holder*, 646 F.3d 672, 679 (9th Cir. 2011).

to a third country. ECF 1 ¶¶ 139. Section 1252(a)(4) bars such claims in habeas.

CONCLUSION

Respondents therefore respectfully request that the Court find it has no jurisdiction to adjudicate Petitioner's claims and deny his Petition for a Writ of Habeas Corpus.

DATED this 18th day of June, 2026.

Respectfully Submitted,

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