SCOTT E. BRADFORD, OSB #062824
United States Attorney
District of Oregon
GEOFFREY A. BARROW, DC Bar #462-662
Assistant United States Attorney
Geoffrey.Barrow@usdoj.gov
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204
Telephone: (503) 727-1000
Attorneys for Respondents

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

R. R. R,[1]	**Case No. 3:26-cv-01410-AA**
Petitioner,	
v.	**RESPONDENTS' RETURN TO PETITION FOR WRIT OF HABEAS CORPUS**
JULIO HERNANDEZ, et al,	
Respondents.	

Respondents, through counsel, submit this return to Respondent's Petition for Writ of Habeas Corpus, ECF 1. This return is supported by a Declaration (herein "Decl.") and attached exhibits.[2]

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[1] Because Petitioner is seeking asylum, the Government has omitted Petitioner's full name from its filings.

[2] The declarant's name has been redacted for purposes of safety and privacy. Petitioner does not oppose this redaction and has been provided with an unredacted copy of the declaration, which

BACKGROUND

Petitioner is a native and citizen of Mexico. ECF 1 ¶ 1; Decl. ¶ 3. On or about November 21, 2014, he applied for admission into the United States at the San Ysidro, California port of entry. Decl. ¶ 3. He lacked valid documents entitling him to lawfully enter the United States and was detained. *Id.* On December 11, 2014, Petitioner was issued a Notice to Appear ("NTA"), charging removability under INA § 212(a)(7)(A)(i)(I), for removal proceedings in Immigration Court. Decl. ¶ 4. He was released on bond on February 2, 2015. Decl. ¶ 5. On May 1, 2019, an Immigration Judge in Portland, Oregon, ordered Petitioner removed to Mexico. Decl. ¶ 6, Ex. 1 (removal order). Petitioner appealed the removal order to the Board of Immigration Appeals ("BIA"). Decl. ¶ 7. On April 26, 2022, the BIA dismissed Petitioner's appeal, making the Immigration Judge's removal order administratively final. ECF 1 at 8, Decl. ¶ 8. United States Immigration and Customs Enforcement ("ICE") cancelled Petitioner's bond and placed him on an Order of Supervision ("OSUP") on September 30, 2024. Decl. ¶ 9, Ex. 2 (OSUP documentation). On February 25, 2026, Petitioner filed a motion to reopen immigration proceedings with the BIA. ECF 1 at 3, 8, Decl. ¶ 10. That motion is pending. ECF 1 at 9. On July 16, 2026, Petitioner filed a motion for a stay of removal with the BIA. Decl. ¶ 11. DHS has filed an opposition, and the BIA has not issued a stay of removal. *Id.* ICE has the means and ability to remove Petitioner to Mexico. Dec. ¶ 12. If ICE revokes Petitioner's OSUP, it will follow the statute and regulations, including but not limited to, informing Petitioner of the reasons for the revocation and conducting an informal interview to afford Petitioner an opportunity to respond to the reasons for revocation. *Decl.* ¶ 13; 8 C.F.R. § 241.13(i)(3).

Petitioner has agreed to keep confidential.

Petitioner filed the present Petition because he and his attorney feared that DHS would revoke OSUP and detain him at his July 17, 2026, appointment. ECF 1 at 9. That did not happen. Respondents now file this return to the Petition.

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. Allapattah 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). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

ARUGMENT

I. This Court Lacks Jurisdiction to Consider Plaintiff's Claims

This Court does not have jurisdiction to review any of Petitioner's claims. Section 1252(g) bars claims arising from three discrete actions identified in section 1252(g), including, the decision or action to "execute removal orders" that plaintiff challenges here. Congress spoke unequivocally, "notwithstanding any other provision of law (statutory or nonstatutory)" including habeas, mandamus, or the All Writs Act "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 commence proceedings, adjudicate cases, or *execute removal orders* against any [noncitizen]." 8 U.S.C. § 1252(g) (*emphasis added).* 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. Because Petitioner's claims seek to prohibit DHS from executing a valid final order of removal, they are barred by 8 U.S.C. § 1252(g).

Petitioner's claims are squarely barred by Ninth Circuit precedent. 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. In *Jennings*, petitioner sought to "enjoin the government from removing him until the BIA ruled on his motion to reopen." *Id.* at 776. He "argued that deportation prior to a ruling on his motion to reopen would violate his due process rights." *Id.* at 775. Petitioner claimed that the procedures associated with his motion to reopen were constitutionally insufficient because they did not guarantee judicial review of "new developments" set forth in the motion to reopen. *Id.* at 776-777. The Ninth Circuit held that under Section 1252(g), petitioner's "challenge [was] to the Attorney General's exercise of his discretion to execute [petitioner's] removal order, which [it had] no jurisdiction to review." *Jennings*, 55 F.4th at 773, 776-78. "The execution of his removal order [was] precisely what [petitioner] challenge[d]," where petitioner sought "to enjoin the government from removing him—or in other words, enjoin 'action by the Attorney General to ... execute removal orders against [petitioner].'" *Id.* at 777. The court rejected petitioner's argument that the statutory bar did not apply because he only sought to delay removal until his motion to reopen could be heard, "[section] 1252(g)'s jurisdictional bar on 'claim[s] . . . arising from the decision

or action by the Attorney General to . . . execute removal orders' does not include any temporal caveats." *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) (district court did not have jurisdiction over habeas claim seeking to stay removal while petitioner appealed denial of motion to reopen); *Hamama v. Adducci*, 912 F.3d 869, 873 (6th Cir. 2018) (vacating district court's injunction staying removal to allow petitioners to reopen proceedings because, under section 1252(g), enforcement of "removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021) (federal courts lack jurisdiction to stay removal order while petitioner seeks administrative relief).

Several district courts within the Ninth Circuit have followed suit, ruling that requests to delay removal to allow habeas petitioners to 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 [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).

In this district, Judge Karin J. Immergut recently found that she did not have jurisdiction

to review DHS's discretionary action to execute a removal order in a case involving a petitioner who had been ordered removed to Laos. *O. S. S. v. Hernandez*, No. 3:26-CV-00796-IM, ECF 12 (D. Or. April 27, 2026). There, the petitioner did not challenge DHS's authority to execute the removal order; he challenged only the procedures he anticipated DHS would utilize to revoke OSUP and sought advanced notice before being taken into custody for removal. *See id.* at ECF 1 ¶ 7. The Court concluded that it did not have jurisdiction under § 1252(g) to review such claims because "Congress has deprived this Court of jurisdiction to block Respondents' discretionary action to enforce Petitioner's final order of removal." *Id.* at ECF 12.

Similarly, in *Saelee*, the Western District of Washington held that § 1252(g) stripped the court of jurisdiction to grant a habeas petition involving two noncitizens with removal orders. 2026 WL 1045223 at *4–5. There, petitioners argued that they were not challenging their removal orders but rather seeking "procedural protections against inappropriate and unlawful detention." *Id.* at *3. Specifically, the petitioners sought an order requiring DHS to give them at least six months' notice before arresting them for removal so that they could prepare to "fight their removal" and "wrap up their affairs with their families." *Id.* at *4. Considering the nature of the requested relief, the Court concluded that 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).[3]

[3] The Court in *Saelee* later partially granted a motion to reconsider, but reaffirmed the part of its jurisdictional ruling applicable here:

> [T]he Court was called on [in the petition] to consider whether re-detention of Petitioners would be unlawful in the absence of the specific procedures Petitioners sought

Here, as in *Rauda*, *O.S.S.*, and *Saelee*, the crux of Petitioner's claims is that he wants this Court to delay his removal. ECF 1 at 12 (requesting this Court enjoin DHS from removing or detaining Petitioner "until the Board of Immigration Appeals adjudicates Petitioner's pending Motion to Reopen"). Petitioner does not challenge his removal order or DHS's authority to execute it. Rather, he asks the Court to stay his removal and prevent DHS from revoking OSUP, detaining him, or transferring him out of the district until his Motion to Reopen is adjudicated. *Id.* Thus, Petitioner's claims, however they are framed, amount to a request for DHS to delay execution of the removal order, something the Ninth Circuit in *Rauda* clearly held is barred under § 1252(g).

Petitioner attempts to avoid binding precedent and the statutory bar by reframing his claims. He contends that removal prior to an individualized consideration of his compliance with OSUP and during "the pendency of a timely and colorable Motion to Reopen" would violate the Administrative Procedures Act, 5 U.S.C. § 706(2)(A). ECF 1 at 10. He also claims that removal before adjudication of his motion to reopen would violate due process. ECF 1 at 11. However petitioner frames his arguments, he is still challenging the Attorney General's exercise of his discretion to execute a valid removal order and, under 8 U.S.C. 1252(g), the court lacks jurisdiction

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> *specifically for the purpose of contesting their removal*. Based on the record, arguments, and authorities presented, the Court found that Petitioners' challenge with this request was to their removal, which stripped the Court of jurisdiction either to consider the request on its merits or to fashion some more limited relief in its stead. *See id.* at 10. Therefore, the Court finds that it did not err either in denying Petitioners' request to enjoin their removal "without advance notice of at least six months to one year, a hearing before a neutral decisionmaker, and a showing that detention is necessary to secure their removal," (Dkt. No. 1 at 28) or in declining to craft some less expansive injunctive relief for a challenge that was fundamentally beyond its authority to consider.

Saelee v. Hernandez, No. 2:26-CV-00735-TL, 2026 WL 1868865, at *4 (W.D. Wash. June 29, 2026) (emphasis in original).

to hear it. In *Tazu*, the court rejected such a loophole finding that "[a]ny other rule would gut § 1252(g). Future petitioners could restyle any challenge to the three actions listed in § 1252(g) as a challenge to the Executive's general lack of authority to violate due process, equal protection, the Administrative Procedure Act, or some other federal law." 975 F.3d at 298.

Petitioner has a valid removal order. It is within DHS's discretion to take Petitioner into custody and execute the removal order. 8 C.F.R. § 241.13(h)(4) ("The Service may, in the exercise of its discretion, withdraw approval for release of any alien under this section prior to release in order to effect removal in the reasonably foreseeable future . . . ."); *id.* at (i)(2) ("The Service may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."); 8 C.F.R. 241.4(l)(2)(i) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official. . . [i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien."). 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 to pursue administrative relief would make it substantially more difficult for DHS to effectuate removal orders. Section 1252(g) expressly bars such interference, and this Court is without jurisdiction to hear Petitioner's claims.

II. The process Petitioner has received and will receive is sufficient under the Fifth Amendment.

Notice and an opportunity to be heard are built into the regulations governing OSUP revocation. Specifically, DHS is required to give notice of the reasons for OSUP revocation and to conduct an informal interview "to afford the alien an opportunity to respond to the reasons for

revocation stated in the notification." 8 C.F.R. § 241.13(i)(3). These procedures are required to take place "upon revocation." *Id.* DHS has indicated it will provide this process if Petitioner's OSUP is revoked and Petitioner is taken into custody in anticipation of removal. Decl. ¶ 12. In short, DHS has committed to following the law.

Petitioner's request for a stay to permit adjudication of his motion to reopen is not supported by statute or regulation, nor is it required by the Due Process Clause of the Fifth Amendment.

The Supreme Court has identified three factors courts must use to determine whether the government provided adequate process to those deprived of an interest protected by the Fifth Amendment:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Regarding the first *Mathews* prong, there is no doubt Petitioner's liberty interest is weighty. But the Ninth Circuit has instructed that an alien's private interests under the *Mathews* test are "diminished" when they are "subject to an order of removal from the United States." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022).

The second prong of the *Mathews* test, "the risk of erroneous deprivation," requires an inquiry into the process provided by the government. "[T]he Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero, a result that is beyond grasp." *Rodriguez Diaz*, 53 F.4th at 1213. A formal hearing is "neither a required, nor even the most effective, method of decisionmaking in all circumstances." *Mathews*, 424 U.S. at 348. All that is

required is "notice of the case against [the individual]" and an "opportunity to meet it." *Id.* "The 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." *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982).

Here, the risk of erroneous deprivation is low given the protections Petitioner has been and will be afforded. Petitioner has already been given layers of due process to ensure that his detention and removal are lawful, including all the protections and processes provided in immigration proceedings, which culminated in an immigration judge ordering Petitioner removed. Decl. ¶ 6, Ex. 1. Petitioner is also protected by the fact that OSUP may only be revoked for certain reasons, including, as relevant here, a change in circumstances such that removal becomes significantly likely in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2). If Petitioner's OSUP is ultimately revoked, he will be given formal notice of the reason for the revocation and an interview to give him "an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(2)–(3); Decl. ¶ 1. Petitioner already has counsel, so he will be well-prepared to give a response to the notice if OSUP is revoked. Simply put, Petitioner has been and will be afforded due process at every step of his removal process, mitigating any risk of error.

Finally, the third *Mathews* factor is the government's interest. The Ninth Circuit has made clear that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Demore v. Kim*, 538 U.S. 510, 518 (2003)). Enforcement of our immigration law "serves both a domestic law enforcement and foreign relations function." *Rodriguez Diaz*, 53 F.4th at 1208. "There is always a public interest in prompt execution of removal orders: The continued presence of an alien

lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law." *Nken v. Holder*, 556 U.S. 418, 436 (2009) (quotations and alteration omitted). Moreover, the Supreme Court has "specifically instructed that in a *Mathews* analysis, [courts] 'must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'" *Rodriguez Diaz*, 53 F.4th at 1208 (quoting *Landon v. Plasencia*, 459 U.S. 21, 34 (1982)). As the time for removal draws closer, "the risk of a detainee absconding also inevitably escalates," heightening the interest in detaining the alien *Id.* All of these interests are "of the highest order that only increase with the passage of time." *Rodriguez Diaz*, 53 F.4th at 1208.

Here, the government's interests are significant. DHS has a significant interest in removing Petitioner, notwithstanding his apparent success on OSUP. He has been ordered removed by an immigration judge, and DHS has the means and ability to execute that removal order. As Petitioner's removal becomes more likely and draws nearer, the government's already strong interest in detaining him increases. Simply put, the government's interests, which are already "of the highest order," are heightened here.

In sum, Petitioner's liberty interest is lessened by his removal order, the Government's interest in detaining and removing aliens that remain in the United States with removal orders is significant, and the process Petitioner has been afforded (and will be afforded upon OSUP revocation) adequately mitigates any risk of erroneous detention. Thus, the laws and regulations authorized by Congress pass constitutional muster under the *Mathews* test, especially as applied to Petitioner. This Court should therefore deny Petitioner's claims for procedures that go above

and beyond what the statute, regulations, and Fifth Amendment require.

CONCLUSION

Respondents, therefore, respectfully request that the Court find it has no jurisdiction to adjudicate Petitioner's claims. If the Court finds it has jurisdiction, Respondents respectfully request that the Court deny the Petition for a Writ of Habeas Corpus on the merits.

DATED this 6th day of August 2026.

Respectfully Submitted,

SCOTT E. BRADFORD
United States Attorney

/s/ Geoffrey A. Barrow
GEOFFREY A. BARROW
Assistant U.S. Attorney
Attorneys for Respondents