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**UNITED STATES DISTRICT COURT**
**DISTRICT OF OREGON**
**Portland Division**

R. R. R.,

Petitioner,

v.

JULIO HERNANDEZ, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); DAVID VENTURELLA, Acting Director of Immigration and Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and TODD BLANCHE, Acting Attorney General of the United States,

Respondents.

Case No. 3:26-cv-01410-AA

**PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

Respondents' return advances two principal arguments and one implicit one. They contend first that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction, and second that the process Petitioner has received, and the process Respondents promise to provide, satisfies the Fifth Amendment. Beneath both runs a further suggestion: that because Respondents did not take Petitioner into custody at his July 17, 2026 appointment, and because a deportation officer has declared that ICE will follow its regulations, there is nothing left for this Court to decide.

Each argument misapprehends the facts, the posture of this case, and the law. First, Petitioner does not challenge Respondents' authority to execute his removal order or the timing of any removal. He challenges Respondents' decision to revoke his decade-old release and to detain him—without any individualized determination, without a valid reason, and without the notice and process the regulations and the Constitution require. Section 1252(g)'s narrow bar on claims "arising from" the decision to "execute removal orders" does not reach such challenges, as this Court held in *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *7 (D. Or. Aug. 21, 2025).

Second, the Fifth Amendment's guarantee of due process is not the thin thing Respondents describe. That guarantee has particular force as applied to Petitioner—a man who has lived in the United States for the better part of two decades, who is the father of three United States citizen children, who has never been arrested, charged, or convicted of any offense anywhere in the world, and who has complied with every condition of his supervised release. Respondents' own authorities ground the government's interest in danger to the community and flight risk. Petitioner presents neither.

Third, this case is neither unripe nor moot. Respondents already purported to revoke Petitioner's release effective midnight on June 26, 2026, and attempted to arrest him at his home the following morning—with no notice of any reason and no individualized finding of changed circumstances. That is not a hypothetical injury; it is a completed one that Respondents remain free to repeat. A litigation-driven promise to "follow the law" cannot carry Respondents' formidable burden of proving that their conduct will not recur.

The Court should reject Respondents' arguments, retain jurisdiction, and grant the relief the Petition requests.

## FACTS

### *Petitioner's Background and Compliance*

Petitioner is a 48-year-old native and citizen of Mexico, born in Acapulco, Guerrero, in 1978. ECF 1 ¶¶ 14, 29. He married his wife, Doranelly Contreras Coria, in 2002, and the couple has three daughters, all United States citizens by birth; the youngest is two years old. Id. ¶¶ 29–31. Petitioner has lived in the United States for most of the last two decades and resides in Oregon with his wife and children. Id. ¶¶ 1, 14.

Petitioner first entered the United States in 2002, returned to Mexico with his family in 2011, and reentered in 2014 after experiencing persecution in Mexico. Id. ¶ 30. He was detained at the border on reentry and released. Id.; ECF 11 at 2 (released on bond February 2, 2015). An immigration judge ordered Petitioner removed on May 1, 2019, and the Board dismissed his appeal on April 26, 2022, rendering the order administratively final. ECF 1 ¶ 36; ECF 11 at 2. ICE cancelled Petitioner's bond and placed him on an Order of Supervision on September 30, 2024. ECF 11 at 2.

Since his release in 2014, Petitioner has complied with every demand, request, and requirement Respondents have imposed. ECF 1 ¶¶ 2, 32. He has attended every immigration hearing, reported as required, and currently reports under the Intensive Supervision Appearance Program while wearing a GPS ankle monitor at Respondents' direction. Id. ¶¶ 2, 33. Petitioner has never been arrested, charged, or convicted of a crime anywhere in the world. Id. ¶¶ 1, 34.

### *Petitioner's Pending Motion to Reopen*

On February 25, 2026, Petitioner filed a motion to reopen with the Board, supported by new evidence that [redacted] and by evidence of changed country conditions in Mexico. Id. ¶¶ 3, 37. Because that evidence

concerns changed country conditions arising in the country of removal and was previously unavailable, the motion falls within the exception to the ordinary 90-day filing deadline. Id. ¶ 37; 8 U.S.C. § 1229a(c)(7)(C)(ii). The motion remains pending and unadjudicated. ECF 1 ¶ 38; ECF 11 at 2.

***Respondents' Attempted Revocation and Detention***

Notwithstanding Petitioner's spotless record and unbroken compliance, Respondents notified Petitioner that his release was revoked at midnight on June 26, 2026, and attempted to arrest him at his residence on June 27, 2026. ECF 1 ¶ 4. Respondents provided no notice of any reason for the revocation and made no individualized finding that any circumstance bearing on Petitioner's flight risk or dangerousness had changed since his release. See id. ¶¶ 4–5, 48. Respondents then directed Petitioner to appear at the Portland ICE office on July 17, 2026. Id. ¶ 4.

Respondents' return confirms that ICE "has the means and ability to remove Petitioner to Mexico" and represents that, if it revokes his supervision, it will provide the notice and informal interview described in 8 C.F.R. § 241.13(i)(3). ECF 11 at 2. Respondents do not contend—because they cannot—that any circumstance bearing on Petitioner's flight risk or dangerousness has changed since 2014.

## ARGUMENT

**I. Section 1252(g) does not strip this Court of jurisdiction because Petitioner challenges his detention and the revocation of his release, not Respondents' authority to execute a removal order.**

Respondents argue that 8 U.S.C. § 1252(g)—which bars claims "arising from the decision or action by the Attorney General to . . . execute removal orders"—deprives the Court of jurisdiction over every claim in the Petition. ECF 11 at 3–8. They read the Petition as nothing more than a request to "delay [Petitioner's] removal" until the Board rules on his motion to reopen, and they invoke *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2022), and a handful of district-court orders. ECF 11 at 7. That reading mischaracterizes the Petition. Petitioner challenges the lawfulness of Respondents' decision to revoke his release and detain him—the manner and process of his custody—not Respondents' discretionary authority to carry out the removal order. Those claims lie outside § 1252(g)'s narrow bar.

***A. Section 1252(g) is narrow and does not reach detention or revocation decisions.***

Section 1252(g) is not a general channeling provision. It "applies only to three discrete actions" of the Attorney General: the decisions to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphases in original). The Supreme Court has cautioned that the provision does not sweep in "all or nearly all deportation claims"; it was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." Id. at 478, 486. A decision to revoke an order of supervision and re-detain a noncitizen is not one of the three enumerated actions. Detention determinations are therefore reviewable in habeas even where a final removal order exists. See *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023); *INS v. St. Cyr*, 533 U.S. 289, 302, 307 (2001) (habeas is the appropriate vehicle to test whether detention rests on "errors of law, including the erroneous application or interpretation of statutes").

Applying Reno's narrow construction, courts "have 'distinguished between challenges to ICE discretion to execute a removal order, which are barred, and challenges to the manner in which

ICE executes the removal order, which are not.'" *M.S.L. v. Bostock*, 2025 WL 2430267, at *7 (quoting *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *8 (W.D.N.Y. May 2, 2025)). In *M.S.L.*, this Court held that § 1252(g) did not bar review where the petitioner, though subject to a removal order, "did not challenge that order but instead challenged 'her detention and the lack of process surrounding her detention,'" including the arbitrary "revocation of her OSUP." Id. Other courts agree. See *Arenado-Borges v. Bondi*, No. 2:25-CV-02193-JNW, 2025 WL 3687518, at *3 (W.D. Wash. Dec. 19, 2025) (jurisdiction over challenge to OSUP revocation and detention where petitioner did not challenge removal order). Tellingly, Respondents themselves cite both decisions as adverse authority, yet offer no basis to distinguish them. ECF 11 at 5.

The Ninth Circuit reads § 1252(g) with the same narrowness. In *Ibarra-Perez v. United States*, 154 F.4th 989 (9th Cir. 2025), *reh'g en banc denied*, No. 24-631 (9th Cir. June 25, 2026), the court confirmed that the provision does not reach every claim connected to removal. It held that a noncitizen's "purely legal" challenge concerning the government's authority to remove him fell outside § 1252(g), and it reversed the dismissal for lack of jurisdiction and remanded. *Id.* at 997–99. Petitioner's challenge is further still from the statute's reach. He does not attack the removal order or the authority to execute it; he challenges the separate decision to revoke his supervision and re-detain him—conduct that is not among § 1252(g)'s three enumerated acts at all. If a purely legal challenge concerning removal authority survives § 1252(g), a challenge to the lawfulness of revocation and detention survives *a fortiori*.

***B. Petitioner's APA claim challenges the arbitrary revocation of his release and falls squarely within this Court's jurisdiction.***

Count Two alleges that Respondents' revocation of Petitioner's supervised release, and any attendant detention, is arbitrary, capricious, and an abuse of discretion because it rests on no

individualized determination and no changed circumstances. ECF 1 ¶¶ 46–49. That is precisely the claim over which *M.S.L.* found jurisdiction. It challenges the custody decision itself—whether Respondents may revoke a decade-old release and detain a compliant, never-convicted person on a categorical basis, without the particularized findings the regulations require. See 8 C.F.R. § 241.4(l). It does not ask the Court to superintend the execution of the removal order or to set its timing.

The revocation regulations confirm the point. Section 241.4(l) permits revocation only "in the exercise of discretion" and only upon a particularized determination by an authorized official—for example, when "[t]he purposes of release have been served," the noncitizen "violates any condition of release," or "any other circumstance[] indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2). And § 241.13(i)(2) authorizes revocation "on account of changed circumstances" establishing "a significant likelihood" of removal. A claim that Respondents revoked release without making any such individualized finding is a claim about the lawfulness of the custody decision, not the removal. *St. Cyr*, 533 U.S. at 302. That ICE has "the means and ability to remove Petitioner to Mexico," ECF 11 at 2, does not answer it: the ability to remove does not license the revocation of a long-standing release order in the absence of the findings and process the regulations demand.

***C. Petitioner's due process claims challenge the absence of individualized process, not Respondents' authority to remove.***

Counts One and Three likewise turn on the absence of individualized process. Fairly read, they allege that Respondents may not revoke Petitioner's release and detain or remove him without an individualized determination and without the process due—not that Petitioner holds a freestanding right to halt his removal. ECF 1 ¶¶ 41–45, 50–53; see id. ¶ 5 (challenging detention

or removal "without any individualized determination that circumstances have changed since" 2014); Prayer ¶ 3 (seeking declaration that "removing or detaining Petitioner without an individualized determination" violates due process). Detention challenges of this kind are not among the three discretionary acts § 1252(g) renders unreviewable. *Reno*, 525 U.S. at 482; *Kong*, 62 F.4th at 617. And even where the government possesses discretion to revoke supervision and re-detain, "that discretion is not 'unlimited' and must comport with constitutional due process." ECF 1 ¶ 51 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 698 (2001)). This Court retains jurisdiction to determine whether Respondents' revocation and detention of Petitioner satisfy that constitutional floor.

***D. Rauda and Respondents' district-court authorities are distinguishable.***

Respondents' reliance on *Rauda* is misplaced. The petitioner in *Rauda* sought to "enjoin the government from removing him until the BIA ruled on his motion to reopen," and argued that "deportation prior to a ruling on his motion to reopen would violate his due process rights" because the motion-to-reopen procedures failed to guarantee judicial review of "new developments." 55 F.4th at 775–77. His claim, in other words, was a direct challenge to the execution and timing of removal. Petitioner's claims are different in kind. He does not seek additional time to pursue relief in the immigration process; he challenges the legality of Respondents' decision to revoke his release and detain him—the absence of individualized findings, of a valid reason, and of constitutionally adequate process. That challenge survives § 1252(g): it targets the revocation of Petitioner's release and his re-detention, not Respondents' discretion over whether and when to remove him. See *Ibarra-Perez*, 154 F.4th at 997–99; *M.S.L.*, 2025 WL 2430267, at *7; *Arenado-Borges*, 2025 WL 3687518, at *3.

The district-court orders Respondents cite are distinguishable for the same reason: each involved a petitioner who sought to postpone removal in order to pursue relief from the removal order. See *Saelee v. Hernandez*, No. 2:26-CV-00735-TL, 2026 WL 1045223, at *4 (W.D. Wash. Apr. 17, 2026) (petitioners sought months' notice to "fight their removal" and "wrap up their affairs"); *Saechao v. Scott*, No. 2:26-CV-00548-TMC, 2026 WL 626765, at *5 (W.D. Wash. Mar. 5, 2026) (petitioner sought stay of removal "so that he can file a motion to reopen"); *Aleman v. Bondi*, No. 2:25-CV-02346-JNW, 2026 WL 102457 (W.D. Wash. Jan. 14, 2026) (petitioner sought to "enjoin removal while the BIA considered his motion to reopen"). *O.S.S. v. Hernandez*, No. 3:26-CV-00796-IM (D. Or. Apr. 27, 2026), on which Respondents lean, is an unpublished docket order with little reasoning that rests on *Saelee* and addressed a petitioner who challenged only the procedures he anticipated and "sought advanced notice before being taken into custody." ECF 11 at 5–6. None of these decisions displaces this Court's own reasoning in *M.S.L.*, which governs a challenge to the revocation of supervision and the process surrounding detention.

Because Petitioner challenges his detention and the revocation of his release—not Respondents' authority to execute the removal order—§ 1252(g) does not bar review, and this Court has jurisdiction under 28 U.S.C. § 2241.

## II. Petitioner is entitled to due process before Respondents revoke his release and detain him.

Respondents argue that Petitioner is entitled to no more than the notice and informal interview described in 8 C.F.R. § 241.13(i)(3), and that anything further is required by neither regulation nor the Fifth Amendment. ECF 11 at 8–12. But whether a regulation compels a pre-deprivation hearing does not answer whether due process requires one. *See Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277, at *2 (N.D. Cal. Sept. 14, 2020). "Due process is a

flexible concept that varies with the particular situation," *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022), and it is measured under the three factors of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the private interest at stake; the risk of erroneous deprivation under existing procedures and the value of additional safeguards; and the government's interest. Each factor favors Petitioner.

**Private interest.** Petitioner's interest in his liberty is profound. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. Freedom from physical detention is "the most elemental" of liberty interests. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Respondents invoke *Rodriguez Diaz* for the proposition that a noncitizen's private interest is "diminished" once subject to a removal order, ECF 11 at 9, but even there the Ninth Circuit held that the private interest weighed in the noncitizen's favor. 53 F.4th at 1208. When Petitioner was released on supervision, he "took with him a liberty interest which is entitled to the full protections of the [D]ue [P]rocess [C]lause." *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025). That conditional liberty "is valuable and must be seen as within the protection of the" Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Petitioner's many years of successful compliance, his two decades in this country, and his three United States citizen children only deepen that interest.

**Risk of erroneous deprivation**. The existing procedure carries a high risk of error. The "opportunity to respond" Respondents describe is an informal interview conducted by ICE—the same agency that decides to revoke release. 8 C.F.R. § 241.13(i)(3). That is not review by a neutral decisionmaker, which the Due Process Clause exists to secure. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (neutrality ensures no person is "deprived of his interests" before an arbiter

"predisposed to find against him"). The regulation, moreover, is silent on when notice must issue, how it must be served, what grounds must be stated, and who bears the burden—leaving ample room for arbitrary deprivation. *See Saelee v. Bondi*, No. 2:25-CV-02677-TLF, 2026 WL 221513, at *6 (W.D. Wash. Jan. 28, 2026). And a post-detention interview cannot cure the problem: a "post-deprivation hearing[] cannot serve as an adequate procedural safeguard because [it occurs] after the fact and [thus] cannot prevent an erroneous deprivation of liberty." *Ledesma Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1203 (W.D. Wash. 2025) (quoting *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025)). The risk here is not theoretical: Respondents purported to revoke Petitioner's release effective June 26, 2026 and attempted to arrest him the next day without stating any reason and without any individualized finding of changed circumstances. ECF 1 ¶¶ 4–5. Courts confronting materially identical facts have held that due process requires pre-deprivation notice and a hearing before an order of supervision is revoked and a noncitizen re-detained. *See Yang v. Scott*, No. 2:26-CV-00469-JNW, 2026 WL 632661, at *3 (W.D. Wash. Mar. 6, 2026); *Somsanuk v. Bondi*, No. C26-48-MLP, 2026 WL 221139, at *4–5 (W.D. Wash. Jan. 28, 2026). Indeed, re-detention absent any changed circumstance "establishes a high risk of erroneous deprivation." *Valdez v. Joyce*, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025).

**Government interest.** On the third factor, Respondents' interest is far weaker than their authorities assume. Respondents rely on *Rodriguez Diaz* but that case describes the government's interest in "protecting the public from dangerous criminal aliens" and detaining "dangerous criminals." 53 F.4th at 1208. Petitioner is not a dangerous criminal. He has never been arrested, charged, or convicted of any offense anywhere in the world. ECF 1 ¶¶ 1, 34. The government's dangerousness interest is thus wholly absent, and its interest in securing Petitioner's appearance is minimal: he has appeared for every hearing and reporting obligation for over a decade and

currently wears a GPS monitor. Id. ¶¶ 2, 32–33. The government's "interest in re-detaining non-citizens previously released without a hearing is low," *E.A.T.-B.*, 795 F. Supp. 3d at 1324, and the administrative burden of pre-deprivation process is slight when weighed against the liberty at stake and the demonstrated risk of error.

Because all three Mathews factors favor Petitioner, due process entitles him to notice and a hearing before a neutral decisionmaker before Respondents revoke his release and detain him. The Court should so hold.

Independent of the process due, Respondents may not revoke a release on a categorical basis. Revocation must rest on individualized findings that circumstances bearing on flight risk or dangerousness have changed. 8 C.F.R. § 241.4(l); id. § 241.13(i)(2). Respondents identify no such change—because none has occurred. Revoking Petitioner's release as part of a categorical enforcement effort, rather than on the individualized findings the regulations require, is arbitrary and capricious and independently offends due process. *See United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007) (due process requires rational, non-arbitrary government action).

## III. Respondents' "trust us" argument does not render Petitioner's claims unripe or moot.

Finally, Respondents suggest that because they did not detain Petitioner at his July 17, 2026 appointment, and because a deportation officer has declared that ICE will follow its regulations if it revokes supervision, there is nothing for the Court to decide. ECF 11 at 2–3, 8–9. That suggestion fails on ripeness and mootness alike.

The claims are ripe. Ripeness grounded in threatened future harm "boil[s] down to the same question" as standing's injury-in-fact requirement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014); *Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir.

2000) (en banc) ("ripeness can be characterized as standing on a timeline"). Petitioner's injury is neither remote nor hypothetical. Respondents have already noticed the revocation of his release and attempted to arrest him. Petitioner plainly has a "personal stake in the outcome of the controversy." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

The claims are not moot. When the government voluntarily ceases challenged conduct, it bears a "formidable burden" of showing "that the practice cannot reasonably be expected to recur." *Federal Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024). That burden is "a heavy one," *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001), and a case becomes moot "only when it is impossible for a court to grant any effectual relief whatever," *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). The Supreme Court has applied that doctrine in the habeas context. See *A.A.R.P. v. Trump*, 605 U.S. 91, 96–98 (2025). Respondents come nowhere near carrying it. They have not repudiated their conduct; they declined to detain Petitioner at his July appointment against the backdrop of this litigation, not because they have abandoned their stated intention to detain him. A deportation officer's declaration that ICE "will follow the law" is not a "clearly effective barrier" to recurrence. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017); *see Los Angeles County v. Davis, 440 U.S. 625, 628 (1979)*. Courts in this District have repeatedly held that a sworn assurance disavowing future re-detention does not moot a habeas challenge of this kind. *See N-E-M-B- v. Bostock*, No. 3:25-cv-00989-SI (D. Or. Dec. 9, 2025); *J-C-R-M- v. Bostock*, No. 3:25-cv-990-SI (D. Or. Dec. 9, 2025). A sister court reached the same result on closely analogous facts: a petitioner's release after he sought emergency relief did not moot his challenge where the government's own submissions showed it continued to pursue the same removal, leaving a "cognizable danger of future harm." *Diallo v. Scott*, No. 2:26-cv-00975-GJL, 2026 U.S. Dist. LEXIS 142584, at *26–*27 (W.D. Wash. June 26, 2026).

The weight owed the officer's assurance is further diminished by the posture in which it arrives. Respondents ask the Court to trust a single deportation officer's representation that ICE will honor Petitioner's rights—an assurance offered only in litigation, and belied by Respondents' own conduct in already purporting to revoke Petitioner's release without notice or individualized findings. As courts have recently observed, the "presumption of regularity" previously extended to Respondents has been eroded in immigration-detention litigation. *Cf. United States v. Oregon*, No. 6:25-cv-01666-MTK (D. Or. Feb. 2, 2026). The Court should not resolve Petitioner's claims on the strength of a promise.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court retain jurisdiction, deny Respondents' request to dismiss for lack of jurisdiction and on the merits, grant the Petition, and order the relief requested therein.

Dated: August 19, 2026.

Respectfully submitted,

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