IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ZHENDI WANG (A# [redacted],

Petitioner,

v.

No. 25-CV-00138-JB-JFR

GEORGE DEDOS, in his official capacity As Warden of the Torrance County Detention Facility; MARY DE ANDA-YBARRA, in her official capacity as El Paso Field Office Director, Immigration and Customs Enforcement, Enforcement and Removal Operations; and KRISTI NOEM, in her official capacity as United States Secretary of Homeland Security;

Respondents.

FEDERAL RESPONDENTS' REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS (DOC. 24)

Respondents Mary De Anda-Ybarra and Kristi Noem (the "Federal Respondents") respectfully submit this reply to Petitioner's Response in Opposition to Federal Respondents' Motion to Dismiss (Doc. 24). In his response, Petitioner asks this Court to fault DHS for not allowing Petitioner to voluntarily depart the United States when DHS had timely appealed that very issue to the Board of Immigration Appeals (BIA). To do so, Petitioner suggests that the Court should render the appellate stay provisions of law invalid. Second, Petitioner asks the Court to create a new distinction in law between appeals of decisions by DHS and those by immigrant detainees. And last, Petitioner asks the Court to shoehorn a Fifth-Amendment claim of improper medical care into a petition for writ of habeas corpus. This Court should deny Petitioner's recommendations to stretch the bounds of law to cover his unripe and irregular claims. Instead, this Court should apply well-worn principles to deny this petition for a writ of habeas corpus as requested by Federal Respondents in the motion to dismiss.

I. Petitioner's Claims Related to Voluntary Departure Are Not Ripe Until Administrative Process Has Resolved.

Petitioner, in opposition to Federal Respondents' Motion to Dismiss (Doc. 20), relies upon a distinction contrary to the governing statutory and regulatory framework, and unrecognized by any case law. Petitioner claims—without support—that his desire to voluntarily depart the United States renders the automatic stay provision of 8 C.F.R. §1003.6(a) inapplicable. Doc 24. While one might guess that this regulation is more often implicated on petitioner appeals to the Board of Immigration Appeals ("BIA"), the text of the automatic stay provision makes no distinction between which party initiates the appeal. *See generally*, 8 C.F.R. §1003.6(a).

The first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. *Peabody Twentymile Mining, LLC v. Secretary of Labor*, 931 F.3d 992 (10th Cir. 2019). When interpreting an administrative regulation, courts apply the same rules used to interpret statutes, beginning with the plain language of the text and giving each word its ordinary and customary meaning. *Id.* (citing *Mitchell v. Comm'r* 775 F. 3d 1243, 1249 (10th Cir. 2015)). If after engaging in this initial textual analysis the meaning of the regulation is clear, the analysis ends. *Id.*

The text at issue here is both plain and unambiguous: "the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification". 8 C.F.R. § 1003.6(a). The grant or denial of an application for voluntary departure by an immigration judge is governed by 8 C.F.R. § 1240.26. Those decisions may be appealed by either party to the BIA. 8 C.F.R. § 1240.26(k)(2) and (3). Accordingly, an appeal of

a decision to grant or deny voluntary departure is stayed pursuant to the plain meaning of 8 C.F.R. § 1003.6(a).

Petitioner's self-described "better reading" of the regulation ignores the plain and unambiguous text of the regulation itself and has no cognizable legal support. Petitioner's immigration case was on appeal when this petition was filed but has now been remanded back to the immigration judge.[1] The Court did not have jurisdiction while that appeal was pending. And it does not now that the case has been remanded to the immigration judge for preparation of a proper order on the merits. Accordingly, Claims One and Two of Petitioner's First Amended Petition (Doc. 19) should be dismissed.

II. Petitioner's 5th Amendment Due Process Claim Is Not Ripe Until Pending BIA Appeal is Resolved.

Petitioner's opposition to the motion to dismiss fundamentally argues that 5th Amendment concerns are greater here than in other cases because 1) Petitioner's desire to voluntary depart and 2) Petitioner's claims under a *Mathews* analysis are not merely ripe but meritorious.

As to Petitioner's desire to voluntarily depart, Petitioner has provided no statute, regulation or jurisprudence to support the argument that this overrides the automatic stay provision of 8 C.F.R. §1003.6(a). As stated above, the text of 8 C.F.R. §1003.6(a) is clear and unambiguous, making no distinction between which party initiates the appeal, triggering an automatic stay. Furthermore, Petitioner's purported desire to depart the United States comes with an important caveat. Petitioner wants to depart the United States under the grant of voluntary

[1] BIA remanded the case to the immigration judge "for the preparation of a complete oral or written decision." See Doc. 26 at Exh. A (Order of the Board of Immigration Appeals (July 31, 2025)).

departure rather than conceding to an order of removal. The distinction matters, as discussed further below.

As to the *Mathews* analysis, Petitioner cites one case where a different automatic stay provision was deemed unconstitutional as applied. *Gunaydin v. Trump*, 2025 WL 1459154 (D. Minn. May 21, 2025). Federal Respondents disagree that this case has authority or persuasive value to this Court. However, should this Court find *Gunaydin* persuasive, it is easily distinguishable from the present matter. First, *Gunaydin* involved 8 C.F.R. § 1003.19, a completely different automatic stay provision, following an immigration bond hearing in which the petitioner prevailed due to the relatively minor nature of his traffic offense. *Id.* at 3. In contrast, an immigration judge denied Petitioner a bond, finding him to be a danger to the community, given the nature of his federal felony conviction. In fact, Petitioner's own appeal of the immigration judge's bond determination is also pending litigation in the immigration courts. Second, the court in *Gunaydin* was heavily influenced by other equities, including Gunaydin's interest to be released back into the United States, which do not exist for Petitioner. *Gunaydin,* 2025 WL 1459154 *at 3.*[2]

Third, an issue not before the court in *Gunaydin* and one which Petitioner ignores entirely, is the significant governmental interest in whether an individual is granted voluntary departure or formally deported. *See generally Monsalvo v. Bondi*, 145 S.Ct. 1232, at 1236 (2025) ("[voluntary departure] allows him to avoid substantial penalties associated with a forcible removal"); *See also Dada v. Mukasey*, 554 U.S. 1, at 11-12 (2008) ("and, of great importance, by

[2] The court noted Gunaydin was being prevented from returning to his studies, for which he took out $40,000 in loans, had fallen behind on his degree, risked losing a previously secured prestigious summer internship as well as future post-graduate employment opportunities in the United States.

departing voluntarily the alien facilitates the possibility of readmission). Voluntary departure would allow Petitioner to reapply for a visa to enter the United States, whereas an order of removal would bar Petitioner from applying for a period of 10 years. *See* 8 U.S.C. § 1182(a)(9)(A)(ii). In the present case, Petitioner was not convicted of a relatively minor traffic offense, but a federal felony for laundering proceeds from illegal steroid sales. *United States v. Wang*, 24-CR-10034 ADB, Doc. 1, 88, 100 (D. Mass 2023). Federal Respondents have a significant interest, and legal right, to appeal the immigration judge's decision and request a formal order of removal from the BIA.

At any moment, Petitioner could agree to accept an order of removal and the United States would take immediate steps to coordinate his removal to China. But so long as Petitioner insists on leaving the United States under a grant of voluntary departure, he will be given the process that he continues to enjoy. Concomitantly, the United States will also be given the process to challenge Petitioner's request for voluntary departure and to insist on an order of removal. For these reasons, in addition and independent of the *Gunaydin* decision's lack of authority over this Court, Petitioner's reliance upon that case is misplaced and Claim Three of Petitioner's First Amended Petition (Doc. 19) should be dismissed.

III. Petitioner's Claim Regarding Deprivation of Proper Medical Care Is Neither Ripe nor Sufficiently Pled to Avoid Dismissal.

Federal Respondents do not contest that Petitioner is entitled to medical care, and similarly Petitioner's opposition to the motion to dismiss does not appear to contest that Petitioner is receiving medical care. Petitioner's primary complaint is that he is not receiving the same medication ([redacted]) now that he had received previously. However, Petitioner has provided no facts to support the argument that he *presently* requires that medication, that failure

to provide that medication *presently* is causing harm or even identified a standard of care that Federal Respondents have allegedly breached.

Although the court must accept the truth of all properly alleged facts and draw all reasonable inferences in the plaintiff's favor, the plaintiff still "must nudge the claim across the line from conceivable or speculative to plausible." *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021). The complaint must provide "more than labels and conclusions" or merely "a formulaic recitation of the elements of a cause of action," because "courts are not bound to accept as true a legal conclusion couched as a factual allegation." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (internal quotations omitted). There must be something more than "naked assertions devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted).

Petitioner is receiving treatment, regularly being monitored and has had lab work as recently as June 23, 2025. [redacted] Doc. 22, Exh. A. at 10. Nonetheless, a specialist appointment has been scheduled for Petitioner on September 15, 2025, to address Petitioner's concerns regarding treatment for [redacted]. At this time, Claim Four of Petitioner's First Amended Petition (Doc. 19) is neither ripe jurisdictionally nor pled with sufficient facts to survive a motion to dismiss.

IV. Conclusion

For all the foregoing reasons, Federal Respondents request the Court dismiss Petitioner's First Amended Petition (Doc. 19).

Respectfully submitted,

RYAN ELLISON
United States Attorney

/s/ Kristopher N. Houghton 8/8/25
KRISTOPHER N. HOUGHTON and
RYAN M. POSEY
Assistant U.S. Attorneys
201 3rd Street NW Suite 900
Albuquerque, New Mexico 87102
(505) 346-7274; Fax (505) 346-7205
nicholas.sydow@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 8, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Kristopher N. Houghton 8/8/25
KRISTOPHER N. HOUGHTON
Assistant United States Attorney