IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

M.K., M.R., AND S.D., Petitioners, v. PAMELA BONDI, United States Attorney General, *et al.*, Respondents.	Case No. 1:25-cv-00281 District Judge Matthew W. McFarland Magistrate Judge Stephanie K. Bowman

RETURN OF WRIT

This Court should deny Petitioners' Petition for Writ of Habeas Corpus and Declaratory and Injunctive Relief ("Petition"). (Petition, Doc. 1.) Petitioners all have final, valid orders of removal which their motion seeks to stay in direct contravention of several jurisdiction stripping provisions in 8 U.S.C. § 1252. (*Id.* at PageID 32-33.)

First, by requesting a stay of removal, Petitioners seek to interfere with Immigration and Customs Enforcement's ("ICE") execution of those removal orders in violation of 8 U.S.C. § 1252(g), which strips district courts of jurisdiction over claims arising from ICE's decision or action to execute a removal order regardless of the legal or constitutional nature of the challenge. Second, Petitioners seeking a stay of removal, claiming they will be removed to a "de facto" third or fourth country "while they pursue motions to reopen"—is barred by § 1252(a)(5) and (b)(9) because Petitioners are being removed to Bhutan, as identified in their removal orders, and

because relief is available to them through the administrative process via a motion to reopen or motion to stay. (Petition, Doc. 1, at PageID 6. ¶13.)

Petitioners also cannot make a case for declaratory or injunctive relief. NO Petitioner is ordered removed to a country other than one identified in their removal order: that is, Bhutan. (Declaration of Luke Affholter, Exhibit A, at 2-6, ¶¶8, 10, 12, 14, 20, 25, 27, 35, 40-41; Removal Orders, Exs. C, D, and E.)

Petitioners claim that their removal to Bhutan may "be a temporary transfer pending automatic expulsion to a third country, . . . and violate the INA, the Convention Against Torture, and due process protections." (Petition, Doc. 1, PageID 5, ¶11.) However, Petitioners fail to identify any statutory or regulatory provision requiring a written notice, or any particular procedures to be followed, when an alien ordered to be removed to one country, claims they will be removed to a speculative third country. Specifically, Petitioners claim that ICE should provide notice that Bhutan intends to expel them to India, and India plans to send them to Nepal, based upon recent reports, and give them time to contest their removal to Bhutan. However, Petitioners' current removal orders, the administrative processes currently available to them, satisfy any cognizable notice and due process requirements.

Finally, Petitioners' arguments regarding any request for injunctive relief fail for similar reasons. Petitioners cannot make a sufficient showing of irreparable harm where an alleged fear of removal to a third (or fourth) country, is speculative, and they have failed to exhaust administrative remedies. The public interest favors consistent application of the law and is served here by Petitioners asserting their

claims an immigration court or the Board of Immigration Appeals ("BIA")—not in this Court. This Court should therefore deny Petitioners' extraordinary habeas relief.

FACTUAL BACKGROUND

The named Petitioners are aliens with final orders of removal. (Petition, Doc. 1, PageID 11, ¶27; Affholter Decl., Ex. A, at 2, 4, 5, ¶¶8, 20, 35.) All have been ordered removed to Bhutan because of their criminal felony convictions. (*Id.* at 2-5.)

Petitioner M. K. is a native of Nepal and a citizen of Bhutan. (Affholter Decl., Ex. A, at 2, ¶4.) He was admitted into the United States as a refugee on September 6, 2011. (*Id.* at 2, ¶5.) On May 5, 2014, Petitioner M.K. was convicted of Burglary, Criminal Trespass, and Interference with Government Property, in DeKalb County Georgia. (*Id.* at 2, ¶6.) On June 3, 2014, an NTA was issued because he was convicted of an aggravated felony. (*Id.* at 2, ¶7.) On August 6, 2014, Petitioner M.K. was ordered removed from the United States to Bhutan, or in the alternative, to Nepal by an Immigration Judge in Atlanta, Georgia. (*Id.* at 2, ¶8; Petition, Doc. 1, PageID 11, ¶27.) In removal proceedings, Petitioner M.K. was represented by counsel, withdrew relief applications, and waived appeal. (Affholter Decl., Ex. A, at 2, ¶8.)

On March 17, 2025, the government of Bhutan issued a travel document for M.K., which was valid until April 16, 2025. (*Id.* at 2-3, ¶9.)

On April 8, 2025, Petitioner was taken into ICE custody for removal to Bhutan. (Petition, Doc. 1, PageID 11, ¶28; (Affholter Decl., Ex. A, at 3, ¶10.) That same day, Petitioner filed a motion to reopen with a request to stay his removal proceedings in

Immigration Court and it was denied on April 15, 2025. (Affholter Decl., Ex. A, at 3, ¶11.)

On April 19, 2025, the government of Bhutan re-issued a travel document for M.K., which is valid until August 18, 2025. (*Id.* at 3, ¶12.)

On May 2, 2025, Petitioner filed an appeal of the denial of the stay request with the Board of Immigration Appeals ("BIA"). (*Id.* at 3, ¶13.)

On May 13, 2025, ICE scheduled M.K. for removal from the United States to Bhutan, to occur in June 2025. (*Id.* at 3, ¶14.)

Plaintiff M. R. is a citizen of Bhutan and national of Nepal. (*Id.* at 3, ¶15.) Petitioner M.R. entered the United States as a refugee in January 2014. (*Id.* at 3, ¶16.)

On June 18, 2015, M.R. was convicted in Franklin County, Ohio of aggravated assault in violation of Ohio Revised Code Section 2903.12. (*Id.* at 3, ¶17.)

On February 22, 2018, he was convicted of Aggravated Vehicular Assault and Felonious Assault. (*Id.* at 3-4, ¶18.) A Notice to Appear was issued on April 25, 2018. (*Id.* at 4, ¶19.)

On April 8, 2019, Petitioner M.R. was ordered removed from the United States for being convicted of a crime involving moral turpitude under INA § 237(a)(2)(A)(i). (*Id.* at 4, ¶20.)

On April 11, 2019, M.R. was arrested by ICE to be removed from the United States to Bhutan or Nepal but he was released on an Order of Supervision on July 31, 2019. (*Id.* at 4, ¶21-23.)

On March 17, 2025, the government of Bhutan issued a travel document for M.R., which was valid until April 16, 2015. (*Id.* at 4, ¶24.)

M.R. was arrested by ICE on April 22, 2025 and remains in ICE custody. (*Id.* at 4, ¶25.) On April 23, 2025, M.R. requested a stay of removal, which remains pending. (*Id.* at 4-5, ¶25-26.)

On April 26, 2025, the government of Bhutan re-issued the travel document for M.R. but, as of May 16, 2025, his removal date has not yet been scheduled. (*Id.* at 5, ¶27-28.)

Petitioner S.D. claims to be stateless. (*Id.* at 5, ¶29.) He arrived in the United States on or about August 5, 2010. (*Id.* at 5, ¶30.) Petitioner S.D. became a lawful permanent resident in December 2011. (*Id.* at 5, ¶31.)

On February 5, 2020, he was convicted of Four Driving Under the Influence Drugs offenses in Dauphin County, Pennsylvania. (*Id.* at 5, ¶33.)

On March 9, 2020, a Notice to Appear was issued charging him with a crime related to controlled substances. (*Id.* at 5, ¶34.)

On October 16, 2020, an Immigration Judge ordered Petitioner S.D. removed from the United States to Nepal, and, in the alternative, Bhutan. (*Id.* at 5, ¶35.)

On November 13, 2020, he was taken into ICE custody for removal. (*Id.* at 6, ¶36.) He was released on February 15, 2021 on an Order of Supervision. (*Id.* at 6, ¶38.)

On March 17, 2025, the government of Bhutan issued a travel document for S.D., but it expired on April 16, 2025. (*Id.* at 6, ¶39.)

On Aprill 11, 2025, Petitioner S.D. was taken into ICE custody for removal from the United States to Bhutan. (*Id.* at 6, ¶40.)

On April 26, 2025, the government of Bhutan re-issued the travel document for S.D., which expires on August 25, 2025. (*Id.* at 6, ¶41.)

S.D.'s removal has not been scheduled as of May 16, 2025. (*Id.* at 6, ¶42.)

LEGAL BACKGROUND

A. Removal Proceedings

Several classes of aliens are "inadmissible" and therefore "removable." *See* 8 U.S.C. §§ 1182, 1229a(e)(2)(A). These include aliens who lack a valid entry document "at the time of application for admission." *Id.* § 1182(a)(7)(A)(i)(I). An alien who arrives at a "port of entry," i.e., a place where an alien may lawfully enter, must apply for admission. An alien present in the United States without being admitted is likely an applicant for admission who is treated the same way. *Id.* §§ 1225(a)(1), (3). If an alien is inadmissible, the alien may be removed. Removal proceedings pursuant to § 1229a involve an evidentiary hearing before an IJ, and at that hearing an alien may attempt to show that he or she should not be removed. Among other things, an eligible alien may apply for asylum on the ground that he or she would be persecuted on a statutorily protected ground if returned to his or her home country. *Id.* §§ 1158, 1229a(b)(4); 8 C.F.R. § 1240.11(c) (2020). If that claim is denied and the alien is ordered removed, the alien can appeal the removal order to the BIA and, if that appeal is unsuccessful, the alien may petition for review in a federal court of appeals. 8 U.S.C. § 1229a(c)(5), 1252(a). While removal proceedings are pending before an IJ or

an appeal is pending before the BIA, the alien will generally be detained or allowed to reside in this country, with the attendant risk that he or she may not later be found. *See* 8 U.S.C. § 1226(a). While asylum is discretionary, withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the regulations implementing U.S. obligations under the CAT, 8 C.F.R. §§ 208.16-.18, 1208.16-.18, are mandatory and prohibit removal to a country where the alien will likely be persecuted or tortured. *See Moncrieffe v. Holder*, 598 U.S. 184, 187 n.1 (2013).

B. Third Country Removals

Aliens subject to removal orders need not be removed to their native country. Generally, aliens ordered removed "may designate one country to which the alien wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A).[1] In certain circumstances, DHS will not remove the alien to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In such a case, the alien "shall" be removed to the alien's country of nationality or citizenship, unless that country "is not willing to accept the alien[.]" *Id.* § 1231(b)(2)(D). If an alien cannot be removed to the country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 231(b)(2)(E)(i), (iii)-

[1] There are separate but similar provisions that apply to arriving aliens who are processed for 240 proceedings upon arrival. *See* 8 U.S.C. § 1231(b)(1). The provisions in 8 U.S.C. § 1231(b)(2) discussed below apply to all other aliens.

(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't.*, 543 U.S. 335, 341 (2005). In addition, DHS "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

ARGUMENT

I. This Court Lacks Subject-Matter Jurisdiction.

The Court should deny the Petition because Petitioners' claims fail. This Court lacks subject-matter jurisdiction over their claims because 8 U.S.C. § 1252, et seq., precludes the review that they seek. Even if the Court had jurisdiction, Petitioners still fail to plead plausible claims for relief.

A. 8 U.S.C. § 1252, et seq. Precludes Review of Petitioners' Claims.

The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Id.* (internal citations omitted). As relevant here, in 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which

included provisions intended to deprive district courts of jurisdiction over removal-based claims. Then, in 2005, Congress amended § 1252 through the Real ID Act to ensure that all review of final orders of removal would be channeled to the courts of appeals. Although this court has jurisdiction over Petitioners' habeas petition, federal district courts lack jurisdiction to address any claims for which [Petitioners] request review of final orders of removal. 8 U.S.C. § 1252(a)(5) (Review of BIA final orders "filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal.")

1. Section 1252(f)) Bars Review of Petitioners' Claims.

The relief Petitioners seek will have the effect of enjoining or restraining DHS's implementation of, inter alia, 8 U.S.C. § 1231. But 8 U.S.C. § 1252(f)(1) explicitly bars such relief. Petitioners request this Court "enjoin Respondents from executing Petitioners' removal orders," (Petition, Doc. 1, at PageID 33), restraining ICE's authority to remove individuals to § 1231(b). Section 1252(f)(1) provides: "Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter . . . other than with respect to the application of such provisions to an individual alien against whom proceedings . . . have been initiated." 8 U.S.C. § 1252(f)(1) (emphasis added).

The Supreme Court held that § 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory

provisions." *Biden v. Texas*, 597 U.S. 785, 797 (2022) (quoting Gar*land v. Aleman Gonzalez*, 596 U.S. 543, 544 (2022)). Section 1231 is one of the statutory provisions § 1252(f)(1) covers.

As a result, § 1252(f)(1) thus eliminates this Court's authority to issue coercive orders enjoining or restraining implementation of § 1231(b).

2. Section 1252(g) Bars Review of Petitioners' Claims.

Section 1252(g) bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

Petitioners' claims plainly arise from ICE's actions to execute their removal orders. Petitioners claim they should be enjoined from removal until they have been "written notice identifying the specific country to which each []will be removed; and whether that country has affirmatively agreed to accept the [Petitioners]" and "ninety

days thereafter to" reopen or seek other legal relief before deportation. (Petition, Doc. 1, PageID 33.)

However, these claims are barred by 8 U.S.C. § 1252(g). The Sixth Circuit and including other Courts of Appeals have consistently held that similar Petitioners' seeking a stay of removal—even temporarily to assert other claims to relief—are barred by § 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018)[2] (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen.*, U.S., 975

[2] *See also E.F.L. v. Prim*, 986 F.3d 959 964-65 (7th Cir. 2021) (rejecting the argument that jurisdiction remained in similar circumstances because petitioner was challenging, DHS's legal authority as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen.*, U.S., 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Poghosyan v. U.S. Dep't. of Homeland Security*, Case No. 2:25-cv-03091, 2025 WL 1287771 (C.D. Cal. May 1, 2025) (on appeal); *Rranxburgaj v. Wolf*, 825 Fed. Appx. 278 (6th Cir. 2020) ("[t]he decision to deny a temporary stay of removal arises directly from the decision of the Attorney General to execute a removal order, so it is rendered unreviewable by § 1252(g).).

In the *Hamama* case, a class of Iraqi nationals claimed that ICE could not enforce their years-old removal orders without first providing them an opportunity to reopen their proceedings and make new fear-based clams. The Sixth Circuit held that "[u]nder a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to review." 912 F.3d at 874.

In *Rauda*, the Ninth Circuit considered whether § 1252(g) barred the alien's claim seeking to temporarily prevent his removal while his motion to reopen his removal proceedings raising "new developments" regarding his CAT claim. 55 F.4th at 776-77. The plaintiff claimed that the administrative procedures associated with his motion to reopen were Constitutionally insufficient because they did not

guarantee judicial review of these "new developments" prior to his removal. *Id.* He argued that § 1252(g) did not apply to ICE's allegedly unlawful decision to remove him now. *Id.* at 777. The Ninth Circuit held that § 1252(g) "does not include any temporal caveats" and nonetheless barred plaintiff's claims.

Both the *Hamana* and *Rauda* decisions are particularly instructive. Petitioners' claims here are no different than those rejected by numerous courts of appeals. They seek to prevent execution of their longstanding removal orders claiming that "new developments" make them unlawful. However, § 1252(g) contains no such exception for such claims regardless of their nature or merit. Therefore, this Court should deny Petitioners' motion seeking to interfere with their removal.

3. Section 1252(a)(5) and (b)(9) Bar Review of Petitioners' Claims.

This Court also lacks jurisdiction over Petitioners' claims concerning removal orders issued under section 1229a given 8 U.S.C. § 1252(a)(5) and (b)(9). Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9). Section 1252(a)(5) provides that [n]otwithstanding any other provision of law (statutory or nonstatutory) . . . or any other habeas corpus provision . . . a petition for review filed with an appropriate court of appeals in accordance with

this section shall be the sole and exclusive means for judicial review of an order of removal . . ."

Because Petitioners' requested relief is, a review of their removal orders to Bhutan, this federal district court lacks jurisdiction to review a final order of removal. *See, e.g., Portillo v. Wolf*, Case No. 2:20-cv-12730, 2020 WL 6130880, *1-*2 (E.D. Mich. October 19, 2020).

In relation to section 1252(a)(9), the Sixth Circuit has explained that district courts "are prohibited from reviewing and vacating a removal order." *Hamdi v. Napolitano*, 620 F.3d 615 F.3d 615, 625 (6th Cir. 2010); *see also Lopez-Meija v. Lynch*, Case No. 1:16-cv-549, 2017 WL 25501, *5 (S.D. Ohio Jan. 3, 2017). In fact, the First Circuit has noted that § 1252(b)(9)'s "expanse is breathtaking." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 9-12 (1st Cir. 2007).

Each of the named Petitioners that are still within the United States can assert fear of return to a third country through the administrative process. 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c). They can also seek an emergency stay of removal as a part of the administrative process. *See generally* 8 C.F.R. § 1003.2(f), 1003.23(b)(v).

Petitioners, therefore, have the ultimate procedural protection they seek—those protections are just not before this Court. For this reason, their claims are unquestionably barred by §1252(a)(5) and (b)(9).

II. Petitioners' Fail to State a Claim.

A. Petitioners Cannot Demonstrate Removal Will Violate Any Laws.

Petitioners' claim that Respondents are violating the INA and its regulations are without merit. In reality, Petitioners are requesting this Court review their removal orders rather than the existing administrative avenues provided by the INA and other statutes.

Petitioners assert that Respondents must give notice and an opportunity to seek protection if removal will be to a de facto third country. (Petition, Doc. 1, PageID, 16-19, 26-27.) But there is no identified statutory or regulatory provision that requires written notice or any particular procedures that must be followed when ICE seeks to remove an individual making a speculative claim they will removed to an alternative country other than where they were ordered removed. Indeed, Petitioners cite to numerous provisions about relief from removal and the procedures available to aliens when they have on-going immigration proceedings but make no plausible claim that ICE has or will violate any mandatory statutory requirements. (*Id.* at PageID 22-32.)

Petitioners cite 8 U.S.C. § 1231(b)(3)(A) claiming that they cannot be removed to a "de facto" third country where their life might be threatened, and this therefore creates a mandatory notice requirement before an individual may be removed to a third country. (Petition, Doc. 1, PageID 27.) However, § 1231(b)(3)(A) provides the basic eligibility requirements for withholding of removal under the INA. Specifically, ICE "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country" on account of a protected ground. 8 U.S.C. § 1231(b)(3)(A). The Attorney General has not decided that

Petitioners' life or freedom will be threatened in Bhutan, India, or Nepal. As such, Petitioners have not made any showing that Respondents are violating this statute or any other provisions of the INA.

Similarly, Petitioners repeatedly allege that Defendants are violating certain regulatory provisions, including 8 C.F.R. §§ 1208.16(c), 1208.18(a)(1) and 28 C.F.R. § 200.1. (Petition, Doc. 1, PageID 27-28.) This is because these regulations provide aliens receiving protection under the Convention Against Torture ("CAT") if they will be removed to a country where it is more likely than not they will be tortured." *See* 8 C.F.R.§ 1208.17(a). Petitioners are not being removed to a country where it has been determined that, more likely than not, they will be tortured. Petitioners have not made any showing that Defendants will violate these regulations by removing them to Bhutan (as ordered).

Petitioners claim Bhutan has "recently revealed a practice of summarily expelling Lhotshampa deportees to India, where they are stateless, undocumented, and at risk of abuse and detention." (Petition, Doc. 1, PageID 28, ¶132.) Assuming all these allegations are true, claiming recent reports are a "practice" of the government of Bhutan, where there is no indication the allege "practice" will continue.

In sum, despite repeated assertions that ICE will be removing Petitioners to a "de facto" third country, this is not the case. Petitioners will be removed to Bhutan, the country where they were ordered to be removed. Bhutan has issued them travel documents, so it follows that Bhutan is willing to accept them.

B. Petitioners Cannot Demonstrate Removal to Bhutan Pursuant to a Valid Removal Order Violates the Fifth Amendment.

Petitioners' claim that their removal to Bhutan will violate their rights under the Due Process Clause of the Fifth Amendment. However, they cannot demonstrate a valid claim. (Petition, Doc. 1, PageID 29-30.) Petitioners cite *Trump v. J.G.G.*, 604 U.S. ___, slip op. at 2-3 (2025 (per curium) to demonstrate that "detainees 'must receive notice . . . in such a manner as will allow them to actually seek habeas relief'"). (*Id.* at PageID 29, ¶141.) Yet, Petitioners have received notice that they are being removed to Bhutan, (Affholter Decl., Ex. A, at 2-6, ¶¶8, 10, 20, 25, 35, 40), and are seeking habeas relief. There is no due process right to receive notice from ICE, in order to contest a speculative, "de facto" third country removal.

Petitioners appear to assert a procedural due process violation in that they allege they will be deprived of the opportunity to present "new motions to reopen based upon the expulsion practices documented for the *first time* in March and April 2025." (Petition, Doc. 1, PageID 29, ¶140.) (emphasis added). Even assuming that Petitioners are entitled to the protections of due process, they still fail to allege a violation of that interest. The essential requirements of procedural due process are: (1) notice; and (2) an opportunity to be heard. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970); *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988). Petitioners do not demonstrate that they have been or will be imminently deprived of these requirements.

Petitioners were all notified that they were to be removed to Bhutan and have had the opportunity to file motions to reopen their removal order. M.K. was ordered removed to Bhutan on August 6, 2014 (over 10 years ago). (Affholter Decl., Ex. A, at 2, ¶8.) M.R. was ordered removed on April 19, 2019 (over 6 years ago). (*Id.* at 4, ¶20.) S.D. was ordered removed on October 16, 2020 (4.5 years ago). (*Id.* at 5, ¶35.) None of them appealed their removal orders. (*Id.* at 2, 4, 5, ¶¶8, 20, 35.)

Petitioners speculate that they will be removed to Bhutan, which will send them to India, which will send them to Nepal and that they will be at risk of persecution in a third or fourth country. (Petition, Doc. 1, PageID 14-19, 23-25, 37, ¶¶47-71, 102-13.) However, Petitioners have had years to contest their removal orders to Bhutan and seek protections to which they may be entitled. *Tazu v. Att'y Gen.*, U.S., 975 F.3d 292, 297 (3d Cir. 2020) ("the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it. Both are covered by the statute.") (emphasis in original).

Petitioners will not be removed to any country except one identified in their removal orders—Bhutan. Speculative removal to a third or fourth country (India or Nepal) is not ripe for judicial review. *Texas v. United States*, 523 U.S. 296, 300 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (cleaned up)); *see also United Pub. Workers v. Mitchell*, 330 U.S. 75, 89 (1947) (noting Article III standing requires "concrete legal issues, presented in actual cases, not abstractions").

Even assuming Petitioners' removal will implicate a protected due process right, no Petitioner has demonstrated that they will be deprived of notice or opportunity to present a fear-based claim prior to deportation to Bhutan. They have all been notified of the intent to remove them to Bhutan. (Affholter Decl., Ex. A, at 3-5, ¶¶10, 25, 35.) If they believe they could be deported to third country, they have the opportunity to assert a fear-based claim now by using the administrative process. Only M.K. has filed a motion to reopen his removal proceedings (which was denied by an Immigration Judge). (*Id.* at 3, ¶11.) As such, Respondents are not preventing Petitioners from exercising their rights to notice or opportunity to present a fear-based claim to a third or fourth country.

For these reasons, each Plaintiff fails to demonstrate a likelihood of success on the merits of their due process claims.

C. Petitioners' are Lawfully Detained Pending Removal.

Petitioners' claims that they are being unlawfully detained beyond the removal period without justification is without merit. (Petition, Doc. 1, PageID 30.) However, Bhutan has issued travel documents for all three Petitioners, which are valid until August 18 or 25, 2025. (Affholter Decl., Ex. A, at 3, 5, 6 ¶¶12, 27, 41.) M.K is scheduled to be removed in June 2025. (*Id.* at 3, ¶14.) M.R. and S.D.'s removal will be scheduled before August 25, 2025. (*Id.* at 5-6, ¶¶27, 41.) Therefore, Petitioners claim that their detention is without justification, is without merit.

D. Habeas Corpus Is Not Suspended.

Respondents claim that they are being denied access to habeas relief fails. (Petition, Doc. 1, PageID 30.-31.)

Petitioners requested relief is not protected by the Suspension Clause, which provides, the "Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the Public Safety may require it." U.S. Const. art. I, § 9, cl. 2. In fact, like the Petitioners in *Hamama v. Adducci*, because Petitioners removal-based claims in this case "fail to seek relief that is traditionally cognizable in habeas, the Suspension Clause is not triggered." 912 F.3d 869 (6th Cir. 2018). As in *Hamama*, the Petitioners removal based claims here do "not challenge any detention and [do] not seek release from custody." *Id.* at 875. By seeking a stay of removal to file motions to reopen, including other injunctive relief, Petitioners are, in fact, seeking to delay their removal. (Petition, Doc. 1, at PageID 32-33.) As the Court explained in the *Hamama* decision, "habeas petitioners . . . instead [] seek a court order requiring the United States to shelter them." 912 F.3d at 875 (quoting *Munaf v. Geren*, 553 U.S. 674, 693-94 (2008)). This case is not analogous to *Trump v. J.G.G.*, 604 U.S. ___, at 2-3 (2025) (per curium), where the habeas petitioners had not received notice sufficient to seek habeas relief. Petitioners received due process here as they were ordered deported to Bhutan. Petitioners are not entitled to due process for speculative removal to a third or fourth country.

As a result, Petitioners claim that habeas corpus has been suspended fails.

E. Petitioners Cannot Demonstrate they are Entitled to Declaratory and Injunctive Relief.

Petitioners seek declaratory and injunctive relief that removal to Bhutan, India, or Nepal, "violates the INA, FARRA, CAT, and the Due Process Clause." (Petition, Doc. 1, PageID 31-32.) As explained above, because Petitioners' claims fail,, they are not entitled to declaratory and injunctive relief. Moreover, Petitioners cannot meet their burden to demonstrate that they will suffer irreparable harm in the absence of an injunction because they received due process and were ordered deported. Further, they currently have access to the relief they seek by filing motions to reopen. Petitioners received their removal orders to Bhutan years ago and only now wish to reopen their removal proceedings. Petitioners have notice and an opportunity to file a "statutory motion to reopen, and additional motions based on changed country conditions . . . ." (Petition, Doc. 1, PageID, 29, ¶138). Petitioners will continue to have access to the administrative process even after removal. *See Rauda*, 55 F.4th at 777 (citing *Nken v. Holder*, 556 U.S. 418, 424 (2009))

Congress intended that Petitioners' claims related to the removal process be channeled through the administrative process and, eventually, the Courts of Appeals. The Petition should therefore, be denied.

CONCLUSION

For the forgoing reasons, this Court should deny Petitioners' Petition for Habeas Corpus and Declaratory and Injunctive Relief. (Petition, Doc. 1.)