IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NELSON ARIEL UMANOR-CHAVEZ	*	
	*	
Petitioner,	*	
	*	
v.	*	No. 8:25-cv-01634-SAG
	*	
NOEM, *et al.*,	*	
	*	
Respondents.	*	

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RESPONSE TO PETITIONER'S AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS, MOTION TO DISMISS OR STAY, AND MEMO IN SUPPORT

Respondents move to dismiss, or in the alternative to stay, the Amended Petition on the grounds that the Petitioner is a class member in a nationwide class certified in *D.V.D. v U.S. Department of Homeland Security*, ECF 118, 64 and 6-1 Civ. 25-10676-BEM (D. Mass. April 18 and May 21, 2025) ("*D.V.D.* Memorandum and Order"). Although the preliminary injunction in *D.V.D.* has been stayed, because Petitioner is a member of this non-opt out class, any claim of relief based on third-country removal processes must be brought in Massachusetts. Respondents further respond in opposition to the Amended Petition. ECF 12-2. A memorandum of law follows below. A proposed order is attached.

I. INTRODUCTION

Petitioner is a member of the class certified in *D.V.D. v. U.S. Dep't of Homeland Sec.* Mem. Order, No. 1:25-cv-10676-BEM (D. Mass. Apr. 18, 2025), ECF 64 (certifying class) [hereafter "*DVD*"]. He concedes as much in his Amended Petition for Writ of Habeas Corpus ("Amended Petition"). ECF 12-2. Although *DVD*'s preliminary injunction setting forth third-party removal procedures has been stayed, Petitioner is still a member of this non-opt out class so any claim of relief based on third-country removal processes must be brought in Massachusetts. *Dept. of*

Homeland Sec. v. D.V.D., 606 U.S. ___ (2025). The Court should deny the Amended Petition on the grounds of Petitioner's class membership. Alternatively, the Court should stay this case pending the resolution of the *D.V.D.* class action.

Moreover, Petitioner's detention complies with the Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution, warranting denial of the Amended Petition. 8 U.S.C. § 1231(a). Finally, 8 U.S.C. § 1252(g) strips this Court of jurisdiction to stay ICE's removal of Petitioner to a third country because it bars district court review of any "decision or action by [ICE] to . . . execute removal orders." *Mapoy v. Carroll,* 185 F.3d 224, 230 (4th Cir. 1999).

II. FACTUAL BACKGROUND

A. Petitioner is subject to a final order of removal.

Petitioner is a citizen and national of El Salvador who entered the United States illegally and was ordered removed but has been has been subject to an Order of Supervision since 2019. ECF 12-2 at ¶ 1; ECF 1-1 at 1–2.

On May 21, 2025, Petitioner reported to Baltimore ICE for a check in and was served with a notice that he would be removed to a third country—Mexico. ECF 7-1. His Order of Supervision was revoked on the same day. ECF 7-2. In revoking the Order of Supervision, the Acting Baltimore ICE Field Office Director determined the "[Petitioner] can be expeditiously removed from the United States pursuant to the outstanding order of removal against you. [And] Your case is under current review by the Government of Mexico for issuance of a travel document." *Id.* at 1. The notice also provided the regulatory basis for detention (8 C.F.R. §§ 241.4 & 241.13) and notified Petitioner of the post-order custody review processes afforded him. *Id.* The Notice explained that Petitioner would be given an interview at which he could "respond to the reasons for the revocation" of supervised release and "may submit any evidence or

information you wish to be reviewed." *Id.* It explained that ICE would provide notification "within approximately three months" of a new review if Petitioner was not released after his informal interview. *Id.*

The instant Petition was filed on May 21, 2025. ECF 1. On May 28, 2025, the Court entered the Amended Standing Order enjoining the Respondents from removing the Petitioner from the continental United States. ECF 2. On May 29, the Court held a status conference with the parties, and later that day, the Court entered a briefing schedule and extended the Amended Standing Order until further order of the Court. ECF 6. The Court held a hearing on the Petition on July 9, 2025. ECF 10. The Court then requested additional briefing on new questions raised in Petitioner's Response/Reply. ECF 8, 11. After reviewing the supplemental briefs, the Court accepted Petitioner's Amended Petition, which raised additional legal issues. ECF 12-2, 15. The Court further directed the Parties to file responses and replies to the Amended Petition. ECF 15.

B. There is currently a certified nationwide non-opt out class action pending in the District of Massachusetts that includes Petitioner.

In March 2025, three plaintiffs instituted a putative class action suit challenging their third country removals in the District of Massachusetts captioned *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.). On March 28, 2025, that Court entered a Temporary Restraining Order (ECF No. 34 at 2) ("*D.V.D.* TRO") enjoining DHS and others from "[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings" unless certain conditions are met. On April 18, 2025, the Court in *D.V.D.* issued an order (D.V.D., 25-10676-BEM) (ECF No. 64) granting the Plaintiff's motion for class certification (ECF. No. 4) and motion for preliminary injunction (ECF. No. 6). That Preliminary Injunction is national in effect, certifies a non-opt out class, and establishes certain procedures that DHS must follow

before removing an alien with a final order of removal to a third country. Specifically, the class is defined as:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

(D.V.D. ECF 64 at 23).

In his Petition for Writ of Habeas Corpus filed on May 21, 2025, Petitioner cites to the *D.V.D.* case in paragraph 16. ECF 1 at ¶ 16. He has removed that citation in his Amended Petition, but his previous filings did not take issue with his membership in the class. ECF 12-3 at ¶ 16 (indicating removal); ECF 8 at 7 (noting class membership but arguing his Petition raises separate issues). Notably, when considering any relief that this Court should enter, Petitioner requests that this Court "permanently enjoin[] Respondents from removing the Petitioner to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal as to that country." ECF 12-1 at 10 (Prayer for Relief, c).

III. LEGAL STANDARDS

Before a court may rule on the merits of a claim, it must first determine if "it has the jurisdiction over the category of claim in suit (subject [] matter jurisdiction)." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-102 (1998)). The burden of proving subject matter jurisdiction rests with the plaintiff. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999). The requirement that a plaintiff establish subject matter jurisdiction "as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception." *Steel Co.*, 523 U.S. at 95 (internal quotation omitted). In determining whether subject matter jurisdiction exists "as a threshold matter," *id.*, a court "may consider

evidence outside the pleadings without converting the proceeding to one for summary judgment," *Evans*, 166 F.3d at 647; *see also Williams v. United States*, 50 F.3d 299, 304 (4th Cir. 1995) (holding that a court may consider exhibits outside pleadings). Challenges to the Court's subject matter jurisdiction "may be raised at any time," even after losing at trial and even if a party "previously acknowledged the trial court's jurisdiction." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434-35 (2011).

IV. ARGUMENT

A. Because Petitioner is a member of an already-certified non-opt out class action, dismissal or stay is appropriate.

Courts recognize that members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). The Fourth Circuit has observed that at least four Courts of Appeals have affirmatively held, in the prisoner context, that "it is error to allow a prisoner to prosecute a separate action once his class has been certified." *Horns v. Whalen*, 922 F.2d 835, 835 (4th Cir. 1991) (table op.) (finding district court did not abuse discretion when it declined to decide an issue that overlapped with a class action "to avoid the risk of inconsistent adjudications). *See also id.* at n.4 (collecting district court cases).

Here, the petitioner is a member of a class action. On April 18, 2025, the District Court for the District of Massachusetts certified a nationwide class under Federal Rule of Civil Procedure 23 addressing third country removals like the one at issue here. *D.V.D.*, Mem. Order,

No. 1:25-cv-10676-BEM (D. Mass. Apr. 18, 2025), ECF 64. The class action litigates the administrative process due to aliens facing third country removal. *D.V.D.*, Mem. Order, No. 1:25-cv-10676-BEM (D. Mass. May 21, 2025), ECF 118 (describing procedures applicable to "[a]ll removals to third countries"). The *D.V.D.* class includes *all* individuals with a final removal order who will be sent to a third country. *D.V.D. v. DHS*. No. 12-cv-10767 (BEM) (D. Mass.) [hereafter, "*D.V.D.*"] Doc. 64 at 23 [hereafter, "*D.V.D.* PI"]. *See also*, *DHS v. D.V.D.*, 606 U.S. ___ at 1 (staying preliminary injunction). *D.V.D.* includes challenges to notices of removal and opportunities to raise fear-based claims. *D.V.D. v. DHS*, Doc. 118.

Petitioner is subject to a final order of removal to a third country and thus falls within this class. ECF 7-1. Furthermore, like the class members, Petitioner, removal to Mexico, and takes issue with the notice and process due to him throughout these proceedings. *See* ECF 12-2 at ¶¶ 33–46. These are the same issues being adjudicated in the District of Massachusetts in *D.V.D.*

Due to the nationwide reach of the class action, this Court should dismiss this case to preserve judicial economy and prevent conflicting decisions on the issue. *See* Fed. R. Civ. P. 23(b)(2) (permitting a class action when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."). *See also Paxton v. Union Nat'l Bank*, 688 F.2d 552, 558-59 (8th Cir. 1982) (noting that under Rule 23(b)(2) class members cannot "opt-out," of the class).

This Court should decline to exercise jurisdiction over the Petition as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim he pursues in Maryland. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a

district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."). *See also, e.g.*, *Goff*, 672 F.2d at 704; *Horns*, 922 F.2d at 835; *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (individual suits for injunctive and declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (duplicative suits should be dismissed once class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (class member should not be permitted to pursue individual lawsuit seeking equitable relief within subject matter of class action); *Bryan v. Werner*, 516 F.2d 233, 239 (3d Cir. 1975) (district court did not err in refusing to consider issue pending in a separate class action).

At its core, the Petition challenges how and in what time frame the Respondents should execute his third country removal. Namely, he seeks notice and an opportunity to be heard on any fear claim prior to being removed to a third country. ECF 12-2 at 10 (Prayer for Relief, c). That is the same relief sought by the plaintiffs in *D.V.D.* Thus, dismissal is warranted. *See* ECF 18-1 (Mem. Op., *Ghamelian v. Baker*, D. Md. SAG 25-2106, Doc. 18 (court declined to consider *DVD* issues)); ECF 18-2 (Mem. Op., *Tanha v. Baker*, D. Md. JRR 25-2121, Doc. 20 at 8 (court did not opine on such relief and determined such matters are more properly addressed by the District of Massachusetts)).

B. Alternatively, this Court should stay proceedings pending the resolution of *D.V.D.*

District courts have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 11410411, at *2 (M.D. Ga. Dec. 16, 2016) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685

F.2d 1284, 1288 (11th Cir. 1982) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936), *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665 (1978), and *P.P.G. Indus. Inc. v. Cont'l Oil Co.*, 478 F.2d 674 (5th Cir. 1973)). "A stay is also necessary to avoid the inefficiency of duplication, the embarrassment of conflicting rulings, and the confusion of piecemeal resolutions where comprehensive results are required." *Chappell*, 2016 WL 11410411, at *3 (internal quotations and citations omitted). "Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure." *Cicero v. Olgiati*, 410 F. Supp 1080, 1099 (S.D. NY 1976).

Here, staying this case avoids the potential for conflicting decisions on central issues. *See Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. Oct. 27, 2017); Fed. R. Civ. P. 23(b)(1)(A) (permitting a class action to proceed when "prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class ..."); *id.* at (b)(2) (permitting a class action when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.").

Because the District Court for the District of Massachusetts has certified a class that includes Petitioner, staying this proceeding would be prudent as a matter of comity. *Cf Munaf*, 553 U.S. at 693 ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"). There is little sense in holding a hearing regarding Petitioner's Writ of Habeas Corpus when the class action, which includes this Petitioner, is already well under way. Dismissing, or at a minimum, staying these proceedings to allow resolution of a nationwide class action to which Petitioner belongs allows for consistent treatment and promotes efficiency. To the extent this Court is inclined to stay this action, the

Parties could submit periodic status reports or conduct telephonic conferences until the *D.V.D.* nationwide class action is resolved, the resolution of which would necessarily resolve Petitioner's claims.

C. Petitioner's claims fail on the merits because ICE is authorized to detain and deport him.

To the extent Petitioner claims that his Revocation and detention are unlawful, he is incorrect. First, ICE lawfully detained him because he is subject to a final order of removal and qualifies for detention under 8 U.S.C. § 1231(a)(6). Second, Petitioner's claim is not cognizable or well-founded at this early point in his detention in light of *Zadvydas v. Davis*, 533 U.S. 678 (2001). Third, Petitioner's claims that ICE did not follow applicable policies and procedures is meritless. Finally, to the extent Petitioner raises a substantive challenge to the wisdom of the Government's decision to revoke his release, such a challenge is not the proper fodder for a habeas petition.

1. ICE lawfully detained Petitioner pursuant to 8 U.S.C. § 1231(a).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined

to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

Petitioner is outside the 90-day mandatory removal period. *See* ECF 1-1 (IJ Order). However, he is still eligible for ICE detention as an inadmissible alien under 8 U.S.C. § 1182(a)(6)(A)(i). As such, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States and he is not entitled to a bond hearing or release as § 1231(a)(6) does not require such process. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof"). Petitioner points to no authority suggesting the 90-day mandatory detention period is the only lawful period during which ICE can detain and remove an individual. Petitioner's detention is therefore lawful under § 1231(a)(6) and this Court should deny his Petition.

2. Petitioner's claim is premature as he has been detained for less than six months.

Petitioner's claim that his detention violates the Fifth Amendment lacks merit, because he been detained less than six months. The Supreme Court set forth a framework to mount a Due Process challenge to post-final order detention in *Zadvydas v. Davis*, 533 U.S. 678 (2001). That framework provides that, while the government cannot indefinitely detain an alien before removal, detention for up to six months is "presumptively reasonable." *Id.* at 701. Because Petitioner has been detained a few weeks, his Due Process challenge must fail.

The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at

the moment of removal." *Zadvydas*, 533 U.S. at 699. To set forth a Constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry,* 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "Zadvydas, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

In *Zadvydas*, the Supreme Court considered the government's ability to detain an alien subject to a final order of removal before the removal is effectuated. 533 U.S. at 699. The Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period, limiting "post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 682, 689. The Court further held that a detention period of six months is "presumptively reasonable." *Id.* at 701. Then after this first six months, the burden is on the petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts back to the government to rebut that showing. *Id.*

Courts routinely deny habeas petitions that are filed with less than six months of detention. *See, e.g.*, *Rodriguez-Guardado v. Smith,* 271 F. Supp. 3d 331, 335 (D. Mass. 2017) ("As petitioner has been detained for approximately two months as of this date, the length of his detention does not offend due process."); *Julce v. Smith*, No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (deeming habeas petition "premature at best" as it was filed after three months of post-final order detention); *Farah v. U.S. Att'y Gen.,* 12 F.4th 1312, 1332-33 (11th Cir. 2021) ("If after six months he is still in custody and has not been removed from the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas*."), *overruled on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2 (2023).

Here, Petitioner's Due Process challenge fails on two fronts. First, he has been detained less than six months, making his detention presumptively reasonable. Second, there is no non-speculative indication in the record that his removal is not reasonably foreseeable. On the contrary, ICE has issued a Notice indicating that his removal to Mexico is in process. *See* ECF 7-1, 7-2.

3. Because confinement for less than six months is presumptively reasonable, the Petition fails on the merits. See, ECF 18-1 at 8 ("The government is entitled to its six-month presumptive period before Petitioner's continued § 1231 (a)(6) detention poses a constitutional issue."). The fact that Petitioner has not yet had an interview does not establish a violation of any regulation.

ICE did not violate any policies or regulations because its Post-Order Custody Regulations do not require an interview to occur within two months of revocation. ICE acted consistently with its Post-Order Custody Regulations when ICE arrested Petitioner. While 8 U.S.C. § 1231(a)(3) is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, ICE issued Post-Order Custody Regulations ("POCR") contained at 8 C.F.R. § 241.4 to set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of supervised release for individuals with final orders of removal. ICE acted consistently with those provisions.

The regulatory provisions concerning revocation of orders of supervised release are contained at 8 C.F.R. § 241.4(l) and provide significant discretion to ICE to revoke release. *See Leybinsky v. U.S. Immigration & Customs Enf't*, 553 F. Appx. 108, 110 (2d Cir. 2014) (remarking on the "broad discretionary authority the regulation grants ICE" to revoke release."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that, while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion . . ."). For example, they provide for revocation in additional circumstances such as when ICE's Field Office

Director determines that "[t]he purposes of release have been served," or when "[i]t is appropriate to enforce a removal order . . . against an alien," or when "[t]he conduct of the alien, *or any other circumstance,* indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i)-(iv) (emphasis added).

When ICE revokes release of an individual under 8 C.F.R. § 241.4(l), ICE must conduct an "informal interview" to advise the individual of the basis for revocation and must also serve the individual with a written notice of revocation. *See* Notice of Revocation of Release, ECF 7-2. If ICE determines revocation remains appropriate after conducting the informal interview, then ICE will provide notice to the individual of a further custody review that "will ordinarily be expected to occur within approximately three months after release is revoked." 8 C.F.R. § 241.4(l)(3); *see also* Notice of Revocation of Release, ECF 7-2. However, ICE is not required to "conduct a custody review under these procedures when [ICE] notifies the alien that it is ready to execute an order of removal." 8 C.F.R. § 241.4(g)(4); *Rodriguez-Guardado*, 271 F. Supp. 3d at 335; ECF 18–2 at 10 ("Habeas is, of course, a proper vehicle to challenge detention, but such an administrative or procedural delay [delayed informal interview] does not rise to the level of constitutional injury warranting the Great Writ."). Further, if ICE determines in its "judgment [that] travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3).

Here, Acting Baltimore ICE Field Office Director ("Baltimore's ICE AFOD") issued Petitioner a written Notice of Revocation of Release on May 21, 2025, explaining that ICE was revoking his release pursuant to 8 C.F.R. § 241.4 and 241.13 as it had determined that Petitioner could be removed from the United States pursuant to his final order of removal. *See* ECF 7-2.

Baltimore's ICE AFOD determined the "[Petitioner] can be expeditiously removed from the United States pursuant to the outstanding order of removal against you . . . . [And] Your case is under current review by the Government of Mexico for issuance of a travel document." *Id.* The notice also provided the regulatory basis for detention (8 C.F.R. §§ 241.4 & 241.13) and notified Petitioner of the post-order custody review processes afforded him. *Id.* The Notice explained that Petitioner would be given an interview at which he could "respond to the reasons for the revocation" of supervised release and "may submit any evidence or information you wish to be reviewed." *Id.* It explained that ICE would provide notification "within approximately three months" of a new review if Petitioner was not released after his informal interview. *Id.* In making this determination, Baltimore's ICE AFOD necessarily determined that revocation was in the public interest to effectuate a removal order. *See Nken v. Holder,* 556 U.S. 418, 435 (2009) (explaining that "[t]here is always a public interest in prompt execution of removal orders").

In revoking Petitioner's supervised release, ICE complied with the regulation that allows revocation when ICE determines that it "is appropriate to enforce a removal order . . . against an alien" and when ICE finds that the "purposes of release have been served." 8 C.F.R. § 241.4(l)(2). When ICE "determined that revocation was necessary to initiate [] removal ... [n]o further justification was required." *Doe v. Smith*, No. 18-cv-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018); ECF 18-2 at 9 ("The regulation permits the Government extraordinary broad discretion to revoke an OSUP; and that discretion is expressly not limited to circumstances where a non-citizen violates the conditions of his OSUP."); The regulation does not require the (A)FOD "to make a formal determination that h[is] revocation was in the public interest[,]" instead, the FOD has "discretion to determine when revocation is appropriate." *Id.* The regulation provides a "short and straight path for immigrants whom the government is ready and able to remove." *Alam*

v. Nielsen, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018). ICE has issued a Notice of Removal to a third country to Petitioner, ECF 15-1, and Mexico is currently reviewing Petitioner's case for the issuance of a travel document, ECF 15-2. As such, ICE has ample justification per its regulation to revoke release.

Courts routinely conclude that compliance with the POCR regulations protect an individual's constitutional rights while detained. *See, e.g.*, *Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) ("When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive the process that is constitutionally required."); *Portillo v. Decker*, No. 21-cv-9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting the conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not "cite[d] legal authority in support of his generalized laments about the administrative process").

To the extent Petitioner seeks this Court to conduct its own custody review or to analyze ICE's custody determinations, as explained by another court, "[s]uch arguments are not proper here. It is ICE's province under 8 U.S.C. 1231(a)(6) to determine whether a removable alien such as [petitioner] should be detained past the 90-day removal period" ... as Congress has "eliminated judicial review of immigration-related matters for which ICE [] has discretion—such as flight-risk determinations." *Xie Deng Chen v. Barr*, No. 1:20-CV-00007-SL, 2021 WL 2255873, at *4 (N.D. Ohio Feb. 5, 2021). *See also Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (District court lacked jurisdiction over petitioner's "challenge to his short re-detention for removal" concerning whether his release was revoked in accordance with regulation because of 8 U.S.C. § 1252(g)); *Portillo*, 2022 WL 826941, at *7 n.9 (Explaining that the court lacks

jurisdiction to review ICE's POCR decisions); ECF 18-2 ("The court finds this [not afforded post revocation informal interview] is an insufficient basis on which to grant habeas relief.")..

Finally, it is "illogical, if not unreasonable" to grant relief to Petitioner on the basis that OSUP compliance over an extended period constitutes a constitutionally protected presumption against re-detention. ECF 18-2 at 12, n.11 (that is neither the holding of *Zadvydas* nor a reasonable extrapolation therefrom.") "Given that the very reason the Supreme Court imposed the 6-month presumption was to eradicate the "serious constitutional questions" posed by potentially indeterminate detention, it seems nonsensical to disallow the Government from detaining Petitioner for any period following statutory revocation of his OSUP based upon the rote calculation of days that have elapsed since his removal period expired." *Id.* at 12.

4. Authority to Issue Notices of Revocation of Release has been properly delegated to Nikita Baker, the Acting Baltimore Field Office Director.

Petitioner's argument that his Notice of Revocation of Release is invalid because the Executive Associate Commissioner did not sign it lacks merit because authority to execute notices of revocation has been delegated to immigration officers such as Nikita Baker, the Acting Baltimore Field Office Director who signed Petitioner's Notice of Revocation of Release. ECF 7-2.

On March 1, 2003, the Secretary of the Department of Homeland Security issued a Delegation of Authority. ECF 14-1. This delegation has not been rescinded or revoked. Pursuant to the Delegation of Authority, a deportation officer, such as the one that signed the Petitioner's Revocation of Order of Supervised Release (ECF 7-2), is authorized to execute such documents pursuant to the Delegations of Authority (Section 2 (T)) which has been redelegated to deportation officers (Section 4 (D)(3)). ECF 12-1 at 4, 8.

Section 2 (T) provides:

> Pursuant to the authority vested in the Secretary of Homeland Security by law, including the Homeland Security Act of 2002 ("the Act"), I hereby delegate to the Assistant Secretary of ICE:
>
> (T) Authority under the immigration laws, including but not limited to sections 235, 236, and 241 of the INA (8 U.S.C. 1225, 1226, and 1231), to issue and execute detainers and warrants of arrest or removal, detain aliens, release aliens on bond and other appropriate conditions as provided by law, and removal aliens from the United States.

ECF 12-1 at 4. Moreover, Section 2(H) broadly delegates authority "to enforce and administer the immigration laws." ECF 12-1 at 2. Finally, Section 4 (D)(3) (Re-delegations) re-delegates this authority to any immigration officer within ICE:

> Immigration Officers. The Assistant Secretary of ICE, the Director of Immigration Interior Enforcement, any Regional or District Director for Interior Enforcement, and any deportation officer, detention enforcement officer, detention officer, special agent, investigative assistant, intelligence agent, immigration agent (investigations), or other immigration officer (as described in section 103 of the INA or 8 C.F.R. 103.1(j)), or senior supervisory officer of such employee, within ICE, is designated as an immigration officer authorized to exercise, and hereby delegated, the powers and duties of such officer as specified by the immigration laws and chapter 8 of the Code of Federal Regulations.

ECF 12-1 at 8. As a result, ICE did not violate any laws or regulations in issuing a Notice of Revocation of Release signed by Nikita Baker.

In sum, because Petitioner does not demonstrate that ICE violated any specific procedures under the applicable regulation, his new arguments lack merit and the petition should still be denied. *See, e.g.*, *Perez v. Berg*, No. 24-cv-3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted,* No. 24-cv-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no due process violation "[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way"); *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews).

D. A habeas petition is not the proper vehicle to challenge the prudence of the Notice of Revocation of Release.

Petitioner's challenge may actually be to the propriety of the Government's decision to revoke Petitioner's release. If this is indeed the crux of the matter, then such claims are not cognizable on review of a habeas petition. *See Hubbard v. Carter*, No. BAH-24-729, 2025 WL 524117 (D. Md. Feb. 18, 2025). Judge Hurson drew this distinction in the prisoner habeas context, noting that a habeas petitioner who seeks to challenge the application of rules, or the "substance of any eventual decision" must bring an APA action, not a habeas petition. *Id.* at *3 n.1 (quoting *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004)).

Here, Petitioner appears to seek just such an impermissible review. *See* ECF 8 at 13 (arguing that "logic" dictates that due to Petitioner's good behavior on release, the Government should not have detained him); ECF 12-1 at ¶¶ 27–29 (alleging Petitioner's compliance with conditions of release). The generosity of government discretion falls outside the purview of a habeas petition and this Court should reject those arguments.

E. This Court lacks jurisdiction to stay ICE's execution of lawful removal orders.

To the extent Petitioner seeks an order staying ICE's effectuation of Petitioner's removal order, this Court is without jurisdiction to offer such relief. Federal law precludes a district court from staying orders of removal. 8 U.S.C. § 1252(g).

Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . execute removal orders against any alien." 8 U.S.C. § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.* Petitioner's "requested relief, a stay from removal, would necessarily impose a judicial constraint on immigration authorities' decision to execute the removal order, contrary to

the purpose of § 1252(g)." *Viana v. President of United States*, No. 18-CV-222-LM, 2018 WL 1587474, at *2 (D.N.H. Apr. 2, 2018), *aff'd sub nom. Viana v. Trump*, No. 18-1276, 2018 WL 11450369 (1st Cir. June 18, 2018); *Mapoy*, 185 F.3d 224, 230 (4th Cir. 1999).

The Fourth Circuit has held that courts lack jurisdiction over actions stemming from § 1252(g). *Mapoy*, 185 F.3d at 230. In *Mapoy*, the petitioner filed a habeas action under 28 U.S.C. § 2241 and sought a preliminary injunction staying his removal while he attempted to reopen proceedings before the BIA and adjust his status based on his marriage to a U.S. citizen. 185 F.3d 224, 225-26 (4th Cir. 1999). The Fourth Circuit reversed the lower court's grant of the injunction, holding that "Congress could hardly have been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252." *Id.* at 230. The Court further noted that Section 1252(b) provided the only avenue for review, but even then only allowed review from the BIA to the courts of appeal. *Id.*; *Nasrallah v. Barr,* 590 U.S. 573, 579 (2020) (noting how, with the passage of the REAL ID Act of 2005, Section 1252(b) was amended to funnel all "issues arising from a final order of removal" to the immigration courts with "direct review in the courts of appeals," and thereby "eliminating review in the district courts").

In sum, the statutory scheme here forecloses any habeas review under 2241 that would stay the execution of a removal order. *Id.*; *see also Loera Arellano v. Barr*, 785 Fed. Appx. 195 (4th Cir. 2019) (affirming dismissal of habeas action seeking stay of removal); *Futeryan-Cohen v. United States INS*, 34 Fed. Appx. 143, 145 (4th Cir. 2002) (reversing district court's grant of habeas relief to stay order of deportation and ordering dismissal); *Fernandez v. Keisler*, 502 F.3d 337, 346 (4th Cir. 2007) (holding that the provision of the INA channeling judicial review

through courts of appeal "expressly eliminate[s] district courts' habeas jurisdiction over removal orders"). The statutory scheme restricts the availability and scope of judicial review of removal orders by expressly precluding habeas corpus jurisdiction and channeling review of such orders to the courts of appeals as "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). The statute provides that review of all questions "arising from any action taken or proceeding brought to remove an alien" shall be available only through a petition for review in the appropriate court of appeals. 8 U.S.C. § 1252(b)(9).

Congress did not give courts the ability to stay removals or reopen removal orders, and in fact, specifically stripped district courts of the ability to interfere with ICE's execution of removal orders. As such, this court must deny any request by Petitioner for a stay of removal for lack of jurisdiction.

V. CONCLUSION

For these reasons, the Court should dismiss the Petition, stay consideration of the Petition, or deny relief.

Dated July 24, 2025

Respectfully Submitted,

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