IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MELGAR HERNANDEZ,	*	
	*	
Petitioner,	*	
	*	
v.	*	No. 1:25-cv-01663-LKG
	*	
BAKER, *et al.*,	*	
	*	
Respondents.	*	

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RESPONSE TO PETITIONER'S 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 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") and the procedures governing third country removals, such as the instant case, have already been ordered. Respondents further respond in opposition to the Petition. A memorandum of law follows below. A proposed order is attached.

I. INTRODUCTION

Petitioner, a convicted aggravated felon, is a member of the class certified in *D.V.D. v. U.S. Deptartment of Homeland Security*. Mem. Order, No. 1:25-cv-10676-BEM (D. Mass. Apr. 18, 2025), ECF 64 (certifying class). He is thus subject to the procedures governing third country removals applicable to those class members. *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 Court should deny Petitioner's Application and enter an Order dismissing his writ on the grounds of Petitioner's class membership. Alternatively, the Court should stay this case pending the resolution of the class action. Moreover, Petitioner's detention complies with the

Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution, warranting denial of the Petition. 8 U.S.C. § 1231(a). Finally, 8 U.S.C. § 1252(g) strips this Court of jurisdiction to interfere with 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 an admitted felon and member of the MS-13 gang subject to a final order of removal.

Petitioner is a citizen and native of El Salvador. ECF 1 at 4. He entered the United States on February 8, 1999, pursuant to an immigrant visa. *Id.* at 5. He overstayed his visa. ECF 1 at 5.

On November 1, 2011, the Government filed a superseding indictment charging Petitioner with violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). ECF 12-1 (superseding indictment). The indictment alleged that Petitioner was "employed by and associated with MS-13," a violent gang. *Id.* at 8. The indictment further alleged that Petitioner attended a meeting with the representatives of various "cliques" of MS-13 and participated in forming "a coalition of cliques, known as a Program." *Id.* at 15. As part of this enterprise, Petitioner allegedly ordered the assassination of someone in El Salvador, helped hide other MS-13 members from the police, distributed cocaine, and helped organized efforts to kill someone in the United States. *Id.* at 16, 18, 20. On March 8, 2013, Petitioner pleaded guilty to a count of conspiracy under the Racketeer Influenced and Corrupt Organizations Act (RICO), in violation of 18 U.S.C. § 1962(d). ECF 12-2 at 1 (amended criminal judgment). He was sentenced to 145 months imprisonment followed by 36 months supervised release. *Id.* at 2–3.

On or around June 17, 2022, ICE issued a Notice to Appear, Form I-862, declaring Petitioner removable due to his RICO conviction. ECF 12-3 at 1 (Notice to Appear). *See also* 8

U.S.C. § 1227(a)(2)(A)(iii) ("Any alien who is convicted of an aggravated felony at any time after admission is deportable."). On February 9, 2024, an immigration judge (IJ) entered a final order of removal but granted Petitioner's application for Deferral of Removal under the Convention Against Torture (D-CAT). ECF 1 at 5; ECF 12-4 at 1 (Order of IJ). On April 19, 2024, Petitioner was released from Department of Homeland Security (DHS) custody pursuant to an Order of Supervision. ECF 1 at 5.

On May 21, 2025, Petitioner was served with a Notice of Revocation of Release, informing Petitioner of the government's "intent to remove him to Mexico." ECF 1 at 6; ECF 12-5 at 1 (Notice of Revocation). The Notice advised that Petitioner that he "can be expeditiously removed from the United States pursuant to the outstanding order of removal" and that his "case is under current review by the Government of Mexico for issuance of a travel document." ECF 12-5 at 1 (Notice of Revocation). 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.* On the same day, he also received a Notice of Removal informing him that ICE would remove him to Mexico. ECF 12-6 at 1 (Notice of Removal)

Petitioner claims he "immediately placed the Respondents on written notice of his request for a reasonable fear interview in regard to any third country to which Respondents may designate his removal." ECF 1 at 6.

The instant Petition was filed on May 23, 2025. ECF 1. On May 23, 2025, the Court entered a Standing Order enjoining the Respondents from removing the Petitioner from the continental United States. ECF 2. On May 27, 2025, the Court held a status conference with the parties. ECF 8. The next day, the Court entered a briefing schedule and vacated the Standing Order. *Id.* Petitioner is currently being housed at Winn Correctional Center in Winnfield, Louisiana.

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.) [hereafter, "*D.V.D.*"]. On March 28, 2025, that court entered a Temporary Restraining Order 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. Temporary Restraining Order, *D.V.D.*, Doc. 34 at 2 [hereafter, "*D.V.D.* TRO"]. On April 18, 2025, the *D.V.D.* court issued an order granting the Plaintiff's motion for class certification and motion for preliminary injunction. Order, *D.V.D.*, Doc. 64. 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. *Id.* Specifically, the class includes all individuals with a final removal order who will be sent to a country "not previously designated . . . [or] identified in writing in the prior proceedings as a country to which the individual would be removed." *Id.* at 23. This is also referred to as a "third country removal."

On May 21, 2025, the *D.V.D.* court issued a Memorandum on Preliminary Injunction spelling out in detail the procedures applicable to third country removals.

> All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, see 8 U.S.C. § 1231(b)(1)(C), must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand. Dkt. 64 at 46–47. Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for CAT protection prior to removal. *See id.* If the non-citizen demonstrates "reasonable fear" of removal to the third country, Defendants must move to reopen the non-citizen's immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a "reasonable fear" of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

Mem. Op., *D.V.D.*, Doc. 118. The *D.V.D.* court indicated that the Order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.*

C. The instant Petition claims that the government lacked authority to detain Petitioner and challenges the foreseeability of his removal to Mexico.

The instant habeas petition alleges that ICE had no authority to detain Petitioner after he was released on an Order of Supervision in April of 2024. ECF 1 at 7. The Petition further alleges that ICE would not "be able to reasonably foreseeably remove the Petitioner to Mexico," noting that he "seeks fear-based relief from removal to that country." *Id.* The Petition also alleges that his re-detention is "arbitrary" and required some "showing of changed circumstances." *Id.* at 8. Petitioner seeks "immediate release from custody." *Id.*

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 class action, dismissal or a 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 Procedures 23(a, (b)(1)(A) and (b)(2) 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").

Petitioner is subject to a final order of removal to a third country and thus falls within this class. Furthermore, like the class members, Petitioner challenges the amount of time the government can detain him, indicates his intent to challenge his removal to Mexico, and takes issue with the process due to him throughout these proceedings. ECF 1 at 6–8. This is the same issue that is being adjudicated in the District of Massachusetts in *D.V.D.* Due to this nationwide injunction, this Court should dismiss this case to preserve judicial economy and prevent conflicting decisions on the issue. *See D.V.D.* PI Order, ECF 64; 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. That is the same relief sought by Plaintiffs in *D.V.D.* and that relief is governed by the class action court order. This Court should decline to wade into an already established process by issuing a potentially conflicting order. To the extent Petitioner, in the future, claims that he did not receive the process mandated by the *D.V.D.* court's order, he or his counsel may contact class counsel and seek relief before the Court in *D.V.D.* Indeed, class counsel in *D.V.D.* have already litigated several emergency motions related to the process given to several class members. Petitioner provides no reason why his case, seeking

identical relief that he has already been issued, should proceed in this Court. Thus, dismissal is warranted.

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.").

Before removing Petitioner to a third country, ICE must comply with the *D.V.D.* nationwide injunction. Because the District Court for the District of Massachusetts has certified a

class that already has and will continue to address Petitioner's claims, 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 *DVD* 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 during his supervised release.

To the extent Petitioner claims that he cannot be detained while ICE complies with the procedures required by the *D.V.D.* injunction to remove him to a third country, 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, following Supreme Court precedent, his claim that there is no "reasonably foreseeable" end to his deportation is not cognizable or well-founded at this early point in his detention.

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 Section 1231(a)(3) or may continue detention under Section 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 12-4 (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 Section 1231(a)(6) does not require such process. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574, 581 (2022) (holding Section 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 section 1231(a)(6) and this Court should dismiss his Petition.

2. Petitioner's argument that his deportation is not reasonably foreseeable is premature.

Petitioner's claim that his detention violates the Fifth Amendment because it has no foreseeable end lacks merit, since 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 less than a month, 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 Section 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 following 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 only been detained for a few weeks, 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 notices indicating that his removal to Mexico is in process. ECF 12-5 at 1; ECF 12-6 at 1. Although Petitioner claims to have a reasonable fear of removal to Mexico, the Petition is devoid of factual allegations indicating either the likelihood of success of his credible fear claim or that it would take more than six months to resolve such a claim. *C.f. Zadvydas*, 533 U.S. at 701 (noting that even after six months of detention, "not . . . every alien removed must be released after six months").

Because confinement for less than six months is presumptively reasonable, and because the Petition is devoid of factual allegations establishing indefinite detention, the Petition fails on the merits.

D. 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 v. Carroll*, 185 F.3d 224 (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, Petitioner's request for a stay of removal from this Court must be denied for lack of jurisdiction.

V. CONCLUSION

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

Respectfully submitted,

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