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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REPLY IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS OR STAY, AND MEMO IN SUPPORT

I. INTRODUCTION

Respondents reply in support of their motion to dismiss or stay. In the time since the government filed its original motion, the Supreme Court has stayed the preliminary injunction issued in *D.V.D. v U.S. Department of Homeland Security*, Civ. 25-10676-BEM (D. Mass. April 18 and May 21, 2025). *See Dept. of Homeland Sec. v. D.V.D.*, 606 U.S. ___ (2025). Although the preliminary injunction 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. Furthermore, statutory authority and Supreme Court precedent allow for Petitioner's detention and provide that detention for six months is presumptively reasonable.

II. ARGUMENT

A. Because Petitioner is a member of an already-certified class action and his claims overlap, dismissal or a stay is appropriate.

Petitioner, a convicted aggravated felon, does not dispute that he 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); ECF 13 at 4 (conceding class

membership). Rather, he argues that because he seeks a release from detention, procedures governing third-party removals are irrelevant to his claims. ECF 13 at 4. However, as Petitioner's response makes clear, his allegations bleed into those covered by *D.V.D.* 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 advances just such challenges here. ECF 13 at 5 (arguing lack of notice); *id.* at 9 (discussing reasonable fear concerns). As a result, Petitioner's claims fall under the non-opt out class action and belong in Massachusetts.

B. Petitioner fails to dispute ICE's authority to detain him.

There is no basis for Petitioner's argument that ICE is unable to detain Petitioner at this point, and the government does not concede that he is outside of the relevant statutory period allowing his detention. *See* ECF 13 at 5 (contending that the government "concede[s] that their redetention of Petitioner fell outside the statutory removal period"). Petitioner's detention is lawful because he is subject to a final order of removal and qualifies for detention under 8 U.S.C. § 1231(a). Second, because he has been detained for less than six months, his detention is presumptively reasonable. Petitioner's claim that the *Zadvydas* six-month clock starts from the date of his removal order, more than a year before his detention began, is meritless. *See* ECF 13 at 7 (arguing that "the six-month presumption should not apply to Petitioner's case" because it has been more than six months since his February 9, 2024 removal order).

As discussed in the government's original motion, 8 U.S.C. § 1231 provides for the detention and removal of aliens with final orders of removal. Although Petitioner is outside the 90-day mandatory detention period provided in 8 U.S.C. § 1231(a)(2), he is still an inadmissible

alien subject to detention under 8 U.S.C. § 1182(a)(6)(A)(i) and therefore subject to detention under 8 U.S.C. § 1231(a)(6).

His current detention, which has lasted well under six months so far, is presumptively reasonable under *Zadvydas*. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). *Zadvydas* relates to the reasonability of detention, looking specifically at the length of detention, not the length of time between an order of removal and the beginning of detention. *C.f. id.* at 682, 689, 699, 701. Detentions shorter than six months do not "offend due process." *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."). Moreover, regulations provide for continued detention of aliens like Petitioner, who are aggravated felons. 8 C.F.R. § 241.4(a)(1).

As to Petitioner's argument that his challenge to a third-country removal is likely to take longer than six months, although his argument may be valid in the future if he is still detained after six months, it is not sufficient to carry the day at this early point in the process. In *Zadvydas* itself, the Supreme Court considered and rejected arguments that the government being "unlikely to succeed in its efforts to remove" a petitioner is sufficient to establish unforeseeable release. 533 U.S. at 685. Instead, the Court explained that the government is due "leeway" to allow for "the status of repatriation negotiations." *Id.* at 700. The "presumptively reasonable period of detention" of six months strikes the balance between the government's interest in enforcing immigration laws and a petitioner's interest in avoiding indefinite detention. *Id.* at 700–01. Finally, post order custody review procedures, which must be provided within 90 days of detention, provide additional due process. These procedures, set forth in 8 C.F.R. § 241.4, provide

for an initial custody review at which Petitioner can provide information in support of his release. *See also*, *Zadvydas*, 533 U.S. at 722 (Kennedy, J. dissenting).

III. CONCLUSION

For these reasons, and those stated in the original motion, the Court should dismiss the Petition, stay consideration of the Petition, or deny relief.

Respectfully submitted,

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By: /s/

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