

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GUSTAVO BASURTO OJEDA,

Petitioner,

v.

NIKITA BAKER, Director, Baltimore
Field Office, U.S. Immigration and Customs
Enforcement,

Respondent.

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Case No.: 1-25-cv-01862-MJM

**MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO PETITIONER'S
VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY
MOTION FOR TEMPORARY RESTRAINING ORDER, MOTION TO DISMISS OR
STAY**

Nikita Baker, Director, Baltimore Field Office, U.S. Immigration and Customs Enforcement ("Respondent"), by and through counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, Thomas F. Corcoran and Beatrice C. Thomas, Assistant United States Attorney for that district, hereby responds to Gustavo Basurto Ojeda's ("Petitioner") Petition and emergency motion for temporary restraining order, and moves 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"), where the procedures governing third country removals, such as the instant case, have already been ordered. Respondent further responds in opposition to the Petition. Respondent's arguments in support of this motion are fully set forth in the memorandum of law below.

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). Thus, he is 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 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.

Additionally, 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). Moreover, 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).

Finally, Plaintiff seeks to enjoin Respondent from removing Petitioner from Maryland. However, Plaintiff cannot demonstrate a likelihood of success on the merits or a likelihood of irreparable harm because there are no detention facilities in Maryland, and due to Maryland’s Dignity not Detention Act, local jails are prohibited from housing ICE detainees.

II. FACTUAL BACKGROUND

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

Petitioner is a citizen and national of Mexico who entered the United States on an unknown date and unknown location without being inspected, admitted, or paroled by an immigration official, i.e., he entered this country illegally. **Exhibit A**, Record of Previous Removal. On July 6, 2009, while being detained in Frederick County Detention Center in Frederick, Maryland for charges of armed robbery, first-degree assault, robbery, and reckless endangerment, an

immigration official served the Petitioner with a Form I-862 Notice to Appear before an immigration judge for the purposes of removal from the United States pursuant Immigration and Naturalization Act (“INA”) Section 212(a)(6)(A)(i). *Id.* On August 14, 2009, an immigration judge granted Petitioner’s application for voluntary departure and on September 28, 2009, an immigration judge ordered Petitioner removed to Mexico. *Id.* On October 22, 2009, Petitioner was removed from the United States to Mexico. *Id.*

Petitioner then re-entered the United States unlawfully on an unknown date at an unknown location. On February 27, 2014, while detained at the Frederick County Detention Center, ICE served Petitioner with a Notice of Intent/Decision to reinstate the previous removal order. Petitioner expressed a credible fear of returning to Mexico and he was placed in withholding only proceedings before an immigration judge. On December 10, 2014, an immigration judge granted Petitioner’s request for withholding his removal to Mexico. (ECF No. 1-1).¹

Petitioner was released on an order of supervision which required him to report to ICE on regular intervals. On June 10, 2025, Petitioner reported for an ICE check-in when was served with a Notice of Intent to Remove to a third country—El Salvador. *Id.*; *see also* **Exhibit B**, Notice of Removal to El Salvador. Additionally, on June 10, 2025, Petitioner’s Order of Supervision was revoked. *See* **Exhibit C**, Notice of Revocation of Release. 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

¹ Detention and Removal of Aliens Ordered Removed.

(3) Restriction on removal to a country where alien’s life or freedom would be threatened. (A) In general. Notwithstanding paragraphs (1) and (2), the Attorney General 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. INA §241(b)(3).

review by the Government of El Salvador 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.*

Petitioner was also served with a Form I-205 (Warrant of Removal/Deportation). **Exhibit D**, Form I-205. The Form I-205 indicates that the Petitioner “is subject to removal/deportation from the United States, based upon a final order by... an immigration judge in exclusion, deportation, or removal proceedings.” *Id.* The Form also indicates the statutory authority of the Immigration and Nationality Act for the removal and is signed by a duly authorized officer of DHS. *Id.*

On June 10, 2025, Petitioner filed a Verified Petition for Writ of Habeas Corpus and Complaint, ECF No. 1, and an Emergency Motion for a Temporary Restraining Order. ECF No. 2. On June 10, 2025, the Court entered Amended Standing Order 2025-01 which enjoined the Respondents from removing the Petitioner from the continental United States. ECF No. 3. On June 11, 2025 at 2:15pm, the Court held a status call with the parties wherein it requested a response to ECF No. 2 be submitted by 11:00 a.m. on June 12, 2025 and a hearing to occur on June 12 at 2:00 p.m. At the status conference, the Court also orally ordered the Respondent not to remove the Petitioner from the State of Maryland until after the June 12, 2025 2:00 p.m. hearing. On June 11, 2025 at 4:33 pm, the Court entered a Paperless Order extending the Amended Standing Order (ECF No. 3) until June 12, 2025 at 5:00 p.m. ECF No. 10.

Petitioner is still being detained in the Baltimore Fallon Federal building.

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).

Notably, when considering any relief that this Court should enter, Petitioner requests that this Court order that Respondent is “enjoin[ed] [] 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 No. 1, ¶ 14.

On May 21, 2025, the *D.V.D.* Court issued a Memorandum on Preliminary Injunction (ECF 118) “offering the following summary and clarification of its Preliminary Injunction:

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.*

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.*

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).

“A [TRO or] preliminary injunction is ‘an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief’ and may never be awarded ‘as of right.’” *Mountain Valley Pipeline, LLC v. W. Pocahontas Properties Ltd. P’ship*, 918 F.3d 353, 366 (4th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008)). “A party seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Roe v. Dep’t of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), *as amended* (Jan. 14, 2020) (citation omitted).

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”).

Petitioner is subject to a final order of removal and is to be removed to a third country; thus falls within this class. Furthermore, like the class members, Petitioner challenges removal to a third country, and takes issue with the process due to him throughout these proceedings. These are the same issues being adjudicated in the District of Massachusetts in *D.V.D.* Due to the nationwide *D.V.D.* 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 Respondent should execute his third country removal. Namely, he seeks notice and an opportunity to seek protection prior to being removed to a third country. ECF No. 1, ¶ 14. That is the same relief sought by the 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 *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 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, 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).

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 No. 1, ¶ 5. 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 dismiss his Petition.

2. *Petitioner’s claim is premature as he has only been detained for almost two days.*

Petitioner’s claim that his detention violates the Fifth Amendment lacks merit, because he has 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 for less than two days, 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 only been detained for roughly two days, 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. **Exs. B and C**, Notice of Revocation of Release, Third Country Removal Notice.

Because confinement for less than six months is presumptively reasonable, 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*, 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.

E. Petitioner cannot stay detained in the State of Maryland.

Despite this Court's Standing Order, ECF No. 3, which prohibits Respondent from removing Petitioner from the continental United States, Petitioner requests that the Court further limit Respondent from transferring Petitioner outside the State of Maryland. This request should be denied. Under Maryland's Dignity Not Detention Act, state and local governments are prohibited from entering into contracts with ICE to detain individuals for federal civil immigration violations. Detention Not Dignity Act, H.B. 16, 2021 Leg., 443rd Sess. (Md. 2021). ICE is required to transfer all aliens to other ICE facilities across the country. *Id.* Yet Petitioner desires that Plaintiff stays in Maryland for convenience and ease of access to his counsel. Not only does this argument lack legal support, but Plaintiff's request is impossible to grant, as no detention facilities exist in Maryland. Petitioner is merely in a "holding room" in the Baltimore Field Office, which is only intended for temporary custody while in transit to a facility with capacity for longer detention, or while being processed for removal. Indeed, this very issue is currently being litigated in this Court in *D.N.N. v. Baker et al.*, 1:25-cv-01613-JRR (D. Maryland). Petitioner's request to remain detained in Maryland is both legally baseless and factually impossible. Thus, Petitioner is not likely to succeed on the merits. Additionally, Petitioner is not likely to succeed on the merits for the reasons set forth in Section IV (Argument), *supra*. As a result, this Court should deny Petitioner's Emergency Motion for Temporary Restraining Order.

V. **CONCLUSION**

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

Dated June 12, 2025

Respectfully Submitted,

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