IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MARIO HERNANDEZ ESCALANTE,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No.: 25-cv-1799-PX

RESPONDENTS' OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND RESPONDENTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY

TABLE OF CONTENTS

Respondents move to dismiss Petitioner's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") or, in the alternative to stay this case on the grounds that Petitioner is a class member in a nationwide class certified by the United States District Court for the District of Massachusetts in *D.V.D. v U.S. Department of Homeland Security*, Case Number 1:25-cv-10676 ("*D.V.D.*") and the procedures governing third country removals, such as the instant case, have already been ordered in that case. Respondents further respond in opposition to the Petition.

I. INTRODUCTION

Petitioner's detention by U.S. Immigration and Customs Enforcement ("ICE") for the purpose of effectuating his reinstated final order of removal is fully supported by the Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution. Additionally, this Court lacks jurisdiction to interfere with ICE's removal of Petitioner to a third country per 8 U.S.C. § 1252(g), which 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) (reversing 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").

The Court should further deny the Petition and enter an order dismissing the Petition on the ground Petitioner is a member of a certified class in a class action lawsuit pending in the United States District Court for the District of Massachusetts, *D.V.D. v. U.S. Department of Homeland Security*, No. 25-cv-10676 (BEM) (D. Mass.) ("*D.V.D.*"), which governs how Respondents should execute third country removals currently and is exactly the relief Petitioner seeks from this Court. Alternatively, this Court should stay this matter pending the resolution of the *D.V.D.* case.

Regarding detention, Petitioner is subject to a reinstated final order of removal and is detained pursuant to 8 U.S.C. § 1231(a). Contrary to Petitioner's claims, ICE complied with its statutory and regulatory authority to arrest and detain him because ICE is prepared to effectuate his removal order pursuant to the processes set forth in *D.V.D.* As such, his detention is authorized by statute, and he has no entitlement to release.

Petitioner's claim that his detention violates the Due Process Clause is also without merit. The Supreme Court set forth a framework for analyzing the constitutionality of post-final order detention under Section 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In *Zadvydas*, the Supreme Court explained that the "reasonableness" of continued detention under Section 1231(a)(6) should be measured "primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." 533 U.S. at 700. The Court held that post-final order detention under Section 1231 is presumptively reasonable for six months. *Id.* at 701. Petitioner's due process challenge to his detention fails because it is premature as he has only been detained for nine days. *See 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.").

II. BACKGROUND

A. Petitioner's Immigration History

Petitioner is a native and citizen of El Salvador who first entered the United States on an unknown date at an unknown location in Texas without being inspected or paroled by an immigration officer. In or about September 1998, Petitioner applied for asylum. That petition was denied. Petitioner's removal proceedings were held on March 18, 1999, at which an immigration judge ("IJ") from the Executive Office of Immigration Review ordered Petition to be removed

from the United States to El Salvador. On May 13, 2005, Petitioner applied for temporary protected status. That petition was denied. On October 4, 2006, Plaintiff was apprehended by ICE and processed as a fugitive alien. On March 26, 2007, Petitioner was removed to El Salvador. *See* Pet. ¶ 19 (ECF No. 1)

Petitioner reentered the United States on an unknown date at an unknown location in Texas without being inspected or paroled by an immigration officer. On January 16, 2010, Petitioner was apprehended by ICE. Petitioner's prior final order of removal was reinstated and, on February 11, 2011, Petitioner was removed to El Salvador. *Id.*

Petitioner reentered the United States again on an unknown date at an unknown location in Texas without being inspected or paroled by an immigration officer. On August 10, 2018, Petitioner was apprehended by ICE. Petitioner's prior order of removal was reinstated, at which time Petitioner claimed a reasonable fear of returning to El Salvador. On December 12, 2019, an IJ granted Petitioner deferral of removal to El Salvador. Order of IJ (ECF No. 1-2).

On June 3, 2025, Petitioner reported for a scheduled check-in with ICE at its Baltimore Field Office. He was detained and served with a Notice of Revocation of Release, a copy of which is attached as Exhibit 1. Upon further review, it was determined that the Notice of Revocation of Release, Ex. 1, that was served on Petitioner in Baltimore, contained typographical errors. An Updated Notice of Revocation of Release, a copy of which is attached as Exhibit 2, was prepared and is pending service on Petitioner in Livingston, Texas, where he is now located. ICE's Baltimore Acting Field Office Director ("(A)FOD") has determined that Petitioner "can be expeditiously removed from the United States pursuant to the outstanding order of removal against [him]." Updated Notice of Revocation of Release, Ex. 2. She continued, "[y]our case is under current review by Mexico for the issuance of a travel document." *Id.* The Updated Notice of

Revocation of Release, like the original Notice of Revocation of Release also provides the regulatory basis for detention (8 C.F.R. §§ 241.4 & 241.13) and notified Petitioner of the post-order custody review processes that will be afforded to him. *Id.* Petitioner was initially detained in Baltimore and is now detained at the IAH Secure Adult Detention Facility in Livingston, Texas.

B. Criminal History

Petitioner has an extensive criminal history. On April 19, 2006, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 11 months suspended. On August 4, 2010, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 12 months imposed with 10 months and 20 days suspended. On June 14, 2018, Petitioner was found guilty of felony simple assault on a law enforcement officer in violation of Virginia law and sentenced to three years imposed with two years and six months suspended. On September 14, 2018, Petitioner was convicted in the United States District Court for the Eastern District of Virginia of illegal entry after removal in violation of federal law for which he was sentenced to 12 months. On February 17, 2022, Petitioner was found guilty of driving under the influence in violation of Virginia law and sentenced to 30 days. On March 24, 2022, Petitioner was convicted of violation of probation in violation of Virginia law and was sentenced to two years and six months.

C. Procedural History

On June 6, 2025, Petitioner filed the Petition (ECF No. 1). That same day, the Court entered Amended Standing Order 2025-01 enjoining Respondents from removing Petitioner from the continental United States (ECF No. 2). On June 9, 2025, Respondents filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction (ECF No. 4). On June 10, 2025, the Court held a status conference with the parties (ECF No. 8) at which it entered an order extending the injunction set

by Amended Standing Order 2025-01 enjoining Respondents from removing Petitioner and setting a briefing scheduled for Respondents' Motion to Dismiss as well as Petitioner's Petition (ECF No. 9).

D. *D.V.D.* Nationwide Non-Opt out Class Action

In March 2025, three plaintiffs instituted the *D.V.D.* case in the District of Massachusetts, a putative class action suit challenging their third country removals. On March 28, 2025, that Court entered a Temporary Restraining Order (ECF No. 34) ("*D.V.D.* TRO") enjoining the Department of Homeland Security ("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 (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.

Order at 23, *D.V.D.* (ECF No. 64).

In his Petition, filed on June 6, 2025, Petitioner cites to the *D.V.D.* case in paragraph 27. Notably, when considering any relief that this Court should enter, Petitioner requests that the Court issue a writ of *habeas corpus* ordering Respondents to comply with the requirement of the *D.V.D.*

preliminary injunction with respect to notice and opportunity to seek protection from removal to a third country." Pet. at 10 (ECF No. 1).

On May 21, 2025, the *D.V.D.* Court issued a Memorandum on Preliminary Injunction (ECF No. 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 [Convention Against Torture] 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.*

In his Petition, Petitioner explicitly seeks the same relief that is the subject of the *D.V.D.* non-opt out class action suit; namely, that certain processes must be provided by the Respondents to any class member before removal to a third country removal. Because Petitioner is bound as a member of the non-opt out class by the *D.V.D.* nationwide injunction, this Court should dismiss this action. Should Petitioner object to the process Respondents provide, he or his counsel may contact class counsel in *D.V.D.* and arrange a challenge to those procedures in the *D.V.D.* case.

III. ARGUMENT

A. The Court should dismiss and deny the relief requested pending resolution of the already certified class action in *D.V.D.*

"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." *Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). As the Eighth Circuit stated,

> After rendition of a final judgment, a class member is ordinarily bound by the result of a class action . . . . If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.

Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982). Thus, dismissal of this action in light of Petitioner's membership in the *D.V.D.* class is warranted. *See Horns v. Whalen*, 922 F.2d 835 (table), No. 90-6068, 1991 WL 78, at *2, 2 n.2 (4th Cir. Jan. 2, 1991) (holding that the district court was correct to avoid the risk of inconsistent adjudications).

On April 10, 2025, the District Massachusetts certified a nationwide class under Federal Rule of Civil Procedure 23(b)(2) and issued a nationwide injunction requiring ICE to provide the precise relief Petitioner asks this Court to issue to him and other members of the class. Specifically, Petitioner seeks relief from this Court as to how the Respondents should execute his third country removal. This is precisely 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* Mem. & Order on Pls.' Mot. for Class Certification and Preliminary Injunction, *D.V.D.* (ECF No. 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 Petitioner's Petition as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim Petitioner is pursuing in the District of Maryland. *Pacesetter Sys., 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."). Multiple courts of appeal have held that it is not an abuse of discretion for a district court to decline to exercise jurisdiction over an issue pending in another court, particularly if the other case is a class action. *Goff*, 672 F.2d at 704); *Brown v. Vermillion*, 593 F.2d 321, 322-23 (8th Cir. 1979); *see also Horns*, 1991 WL 78, at *2, 2 n.2 (holding that the district court did not abuse its discretion in declining to decide issue that was subject of class action) (collecting similar district court cases); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (holding that 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) (hodling that duplicative suits should be dismissed once a 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) (holding that 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) (finding that the district court did not err in refusing to consider an issue pending in a separate class action).

At its core, the Petition challenges how the Respondents should execute his third country removal. Namely, Petitioner seeks notice and an opportunity to be heard on any claim of reasonable fear prior to being removed to a third country. Pet. at 10 (ECF No. 1). That is precisely the relief sought by Plaintiffs in *D.V.D.* and precisely what the District of Massachusetts ordered that a nationwide class of aliens, which includes Petitioner, be provided. 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 conceivable reason why his case, seeking identical relief that he has already been issued, should proceed in this Court. Thus, dismissal is warranted.

B. <u>Alternatively, the Court should stay this case pending the resolution of *D.V.D.*</u>

District courts also have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, No. 5:06-cr-112-CAR-CHW, 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. Continental 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 (cleaned up). Here, it is apparent that the potential for conflicting decisions on the issues central to this case increases daily but trailing a nationwide class action serves great equity and

inoculates against different courts reaching different conclusions, or even inconsistent approaches. *See Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 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.* 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").

Before removing Petitioner to a third country, ICE must comply with the *D.V.D.* nationwide injunction. Because 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 v. Green*, 553 U.S. 674, 693 (2008) ("[P]rudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power."). There is little sense to hold a hearing regarding Petitioner's Petition when the class action – that includes this Petitioner – is already well under way.

"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.N.Y. 1976). Dismissing, or at a minimum, staying these proceedings to allow resolution of a nationwide class action involving a class 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. ICE is authorized to detain Petitioner

To the extent Petitioner claims that he cannot be detained while ICE complies with the procedure required by the *D.V.D.* injunction to remove him to a third country, he is incorrect.

1. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231.

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; this is known as the "removal period." During the removal period, section 1231(a)(2) commands that ICE "shall detain" the alien. If, however, the removal period has expired, ICE can either release the alien pursuant to an Order of Supervision as directed by Section 1231(a)(3) or may continue detention under Section 1231(a)(6). Per Section 1231(a)(6), ICE may continue detention beyond the removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal."

Because Petitioner's order of removal was final in 1999, Petitioner is now outside of the 90-day removal period during which the government "shall detain" the individual. 8 U.S.C. § 1231(a)(2). However, 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i); that is, Petitioner was neither admitted nor paroled in the United States upon entry. As such, ICE has statutory authority to detain Petitioner to effectuate his removal order from the United States, and Petitioner is not entitled to a bond hearing or release as Section 1231(a)(6) does not contemplate such process.

The Supreme Court in *Johnson v. Arteaga-Martinez* answered the question of "whether the text of § 1231(a)(6) requires the Government to offer detained noncitizens bond hearings after six months of detention in which the Government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community." 596 U.S. 573, 574 (2022). It responded definitively, holding that section 1231(a)(6)'s plain text, which "says nothing about bond hearings before immigration judges or burdens of proof" [and] "directs that we answer this question in the negative." *Id.* at 581.

That ICE seeks to remove Petitioner to a third country does not alter this analysis. Section 1231(b)(1)(C) authorizes Petitioner's removal to a third country and detention to carry out that removal is lawful under section 1231(a)(6). Petitioner points to no authority in his Petition that disallows his detention. Indeed, even in *D.V.D.*, Plaintiffs have not sought to limit their detention while ICE complies with additional procedures to remove them to a third country. Petitioner's detention therefore is lawful under section 1231(a)(6), and this Court should dismiss his Petition.

2. Petitioner's statutorily authorized detention is constitutional.

Petitioner claims that his detention violates the Fifth Amendment's Due Process Clause, first on the ground that there is no "significant likelihood of removal in the reasonably foreseeable future." Pet. ¶ 37 (ECF No. 1). The allegation is facially and factually incorrect. As stated above, an IJ has entered an order of removal, ICE has issued an Updated Notice of Revocation of Release, Ex. 2, and Petitioner's "case is under current review by Mexico for the issuance of a travel document."

Petitioner also alleges that he has been detained but that "no viable third country of removal has been identified and the quest to find a third country is merely speculative." Pet. ¶ 25 (ECF No. 1). This allegation also is facially and factually incorrect. ICE has identified a third country –

Mexico – to which to remove Petitioner, and Mexico is reviewing Petitioner's case for the issue of a travel document. Updated Notice of Revocation of Release, Ex. 2.

In any event, Petitioner's detention comports with the framework set forth by the Supreme Court in *Zadvydas v. Davis*, through which a due process challenge to post-final order detention must be analyzed. Petitioner does not face indefinite detention and will not be removed to El Salvador. Rather, he will be removed to Mexico, a third country, pursuant to the process afforded by *D.V.D.*

As recognized by the Supreme Court, "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. And here, it does.

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) (xplaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established"); *Jimenez v. Cronen,* 317 F. Supp. 3d 626, 634 (D. Mass. 2018) (explaining that "*Zadvydas* addressed the substantive due process component of the Fifth Amendment. The Supreme Court held, in effect, that an alien's right to substantive due process could be violated by prolonged detention even if the alien's right to procedural due process had been satisfied"); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (noting that the *Zadvydas* "test articulates the outer bounds of the Government's ability to detain aliens . . . without jeopardizing their due process rights").

In *Zadvydas*, the Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period. 533 U.S. at 682. The Supreme Court "read an implicit limitation into the statute . . . in light of the Constitution's demands" and held that section 1231(a)(6), "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689. The *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, the Supreme Court explained, an individual could file a habeas petition seeking release. *Id.* at 700-01. In such petition, the individual must show there is "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Id.* at 701. If the individual does so, the burden would then shift to the government to produce "evidence sufficient to rebut that showing." *Id.*

Petitioner's due process claim fails because any *Zadvydas* challenge cannot be raised until Petitioner has been detained for six-months in post-final order custody; Petitioner here has been detained for only 11 days. *See Rodriguez-Guardado,* 271 F. Supp. 3d at 335 ("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. 18-cv-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) (explaining that "[i]f 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*").

D. ICE's revocation of release comports with its regulations and the Constitution.

Petitioner's claim that his arrest and detention violate the Constitution is wholly without merit because ICE is entitled to exercise its significant discretion in revoking Petitioner's release in an appropriate manner.

1. The Post-Order Custody Regulations provide for revocation of release at ICE's discretion to effectuate a removal order.

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 release for individuals with final orders of removal.

The regulatory provisions concerning revocation of 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. 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). 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. 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).

2. ICE complied with the POCR regulations to detain Petitioner.

ICE's Baltimore (A)FOD issued to Petitioner a written Notice of Revocation of Release on June 3, 2025, explaining that ICE was revoking his release pursuant to 8 C.F.R. § 241.4 as it had determined that Petitioner could be removed from the United States pursuant to his final order of removal. Ex. 1; Ex. 2. Per the revocation notice, the (A)FOD stated that ICE made "a determination that there are changed circumstances in your case." Updated Notice of Revocation of Release, Ex. 2. In making this determination, the (A)FOD 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 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). The regulation does not require the (A)FOD "to make a formal determination that her 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); *see also Ferrari v. Wilcox*, No. 19-cv-385-RSM-BAT, 2019 WL 13209736, at *5 (W.D. Wash. Sept. 24, 2019) (explaining that because ICE had "obtained a travel document[] and scheduled his removal, ICE properly revoked [petitioner's] release . . .").

Here, Petitioner is subject to an order of removal, and Mexico is currently reviewing Petitioner's case for the issuance of a travel document. Ex. 2. As such, ICE has ample justification per regulation to revoke release.

To the extent Petitioner believes ICE should have provided him with advance notice of its intent to revoke his release, such belief is not grounded in regulation or the Constitution. ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that it could encourage flight or increase law enforcement safety concerns. *See Doe*, 2018 WL 4696748, at * 7 (explaining that the "regulation does not require that a petitioner or her counsel be given 30 days' notice prior to the initial informal interview."); *see also Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) (finding no "due process right to not be snatched off the street without warning" when ICE revoked discretionary parole and returned individual to custody); *Reyes v. King,* No. 19-cv-8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021) (explaining that "the Due Process Clause of the Fifth Amendment does not entitle [p]etitioner to such a [pre-detetion] hearing at this specified time, and [p]etitioner cites no authority within this Circuit that counsels otherwise."); *Moran v. U.S. Dep't of Homeland Sec.*, No. 20-cv-696-DOC-JDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (expressing skepticism about "the source

of any due process right to advance notice of revocation of supervised release or other removal-related detention.").

Courts routinely conclude that compliance with the POCR regulations protect 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").

Because Petitioner does not allege that ICE violated any specific procedures under the applicable regulation, his petition should 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).

To the extent Petitioner asks 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-7-SL, 2021 WL 2255873, at *4 (N.D. Ohio Feb. 5, 2021); *see also Tazu v. Att'y Gen. U.S.A.*, 975 F.3d 292, 297 (3d Cir. 2020) (finding that the 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).

As such, Petitioner's claim that ICE's arrest and detention of Petitioner violated its regulations or the Constitution fails as ICE properly exercised its ample discretion in revoking Petitioner's release.

E. This Court lacks jurisdiction to interfere with Petitioner's removal from the United States.

To the extent Petitioner asks this Court to enter an order staying ICE's effectuation of Petitioner's reinstated removal order – which he does not appear to have done – this Court is without jurisdiction to offer such relief as 8 U.S.C. § 1252(g) precludes a district court from staying orders of removal. 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*." (emphasis added). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title." *Id.* Section 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999). Indeed, 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).

In *Mapoy v. Carroll*, 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 Board of Immigration Appeals ("BIA") and adjust his status based on his marriage to a United States citizen. 185 F.3d at 225-26. 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 section 2241 in district courts which seeks to stay the execution of a removal order. *Id.*; *see also 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's habeas jurisdiction over removal orders"); *Loera Arellano v. Barr*, 785 Fed. Appx. 195 (4th Cir. 2019) (affirming dismissal of habeas action seeking stay of removal); *Futeryan-Cohen v. U.S. Immigration & Naturalization Svc.*, 34 Fed. Appx. 143, 145 (4th Cir. 2002) (reversing district court's grant of habeas relief to stay order of deportation and ordering dismissal).

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. *Id.* § 1252(b)(9).

Petitioner has had ample opportunity to reopen his removal order, entered over 25 years ago in 1999, and to seek a stay of removal. Congress, however, did not provide authority to this Court to consider such requests, 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.

IV. CONCLUSION

For the above reasons, Petitioner's assertion of unlawful detention in violation of statute, regulation, and the Constitution fails. As such, this Court should deny his request for release. Moreover, the Court should dismiss Petitioner's Petition on the ground that Petitioner is a class member of *D.V.D.* seeking the same relief as *D.V.D.* class members. Alternatively, Respondents respectfully request that this Court stay this matter pending the resolution of the *D.V.D.* case.

Respectfully submitted,

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