IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

REZA ZAVVAR,

Petitioner,

v.

NIKITA BAKER, *et al.*,

Respondents.

Civ. A. No. 1:25-cv-2104-TDC

ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS AND MOTION TO DISMISS OR STAY

TABLE OF CONTENTS

I. INTRODUCTION

Kristi Noem, Secretary of the U.S. Department of Homeland Security; Nikita Baker, Director, Baltimore Field Office, U.S. Immigration and Customs Enforcement; and Pam Bondi, Attorney General of the Untied States ("Respondents"), by and through counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, and Thomas F. Corcoran and Michael J. Wilson, Assistant United States Attorneys for that district, hereby answer the Petition filed by Reza Zavvar ("Petitioner"), and 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"), where the procedures governing third country removals, such as the instant case, are being litigated. Furthermore, statutory authority and Supreme Court precedent allow for Petitioner's detention and provide that detention for six months is presumptively reasonable. 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.

II. FACTUAL BACKGROUND

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

Petitioner is a citizen of Iran who entered the country in approximately 1985 and thereafter was granted asylum and permanent residence. Pet. ¶ 17. In 1994 and 1998, Petitioner was convicted of two offenses involving the possession or attempted possession of marijuana. *Id.* In 2004, based on these convictions, "the Department of Homeland Security placed him into removal proceedings." *Id. See also* 8 U.S.C. § 1182(a)(2)(A)(i)(II) (providing that an alien is inadmissible if he or she has been "convicted of . . . a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled

substance"). On October 11, 2007, a United States Immigration Judge ("IJ") ordered Petitioner removed but also granted Withholding of Removal from Iran under Section 241(b)(3) of The Immigration and Nationality Act ("INA"). Exhibit A (Order of the Immigration Court); *accord* Pet. ¶ 17. Notwithstanding being subject to a final order of removal, Petitioner was not detained during his removal proceedings, and he has remained in the United States since then. Pet. ¶ 17.

On June 28, 2025, officers from the U.S. Immigration & Customs Enforcement ("ICE") detained Petitioner outside of his house in Maryland. Pet. ¶¶ 2, 17. On July 1, 2025, Petitioner was served with notices that ICE intends to remove him to Romania or Australia.[1] Exhibit B (Notice of Removal to Romania); Exhibit C (Notice of Removal to Australia). Petitioner is currently in ICE custody in the Port Isabel Service Detention Center, Los Fresnos, Texas.

On June 30, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. ECF No. 1. On July 1, 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 July 1, 2025, the parties conducted a status conference with the Court wherein the parties agreed to a briefing schedule. ECF Nos. 7, 9. After the status conference, the Court entered an Order further enjoining the Respondents from removing the Petitioner from the Continental United States absent further Order of the Court. ECF No. 8.

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

[1] Petitioner posted bond on May 25, 2004, and was released from ICE custody. He was ordered removed while on bond and was not taken back into ICE custody until June 28, 2025. Accordingly, Petitioner was never subject to supervised release and was therefore not served with a Revocation of Supervised Release.

(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 plaintiffs' motion for class certification (ECF No. 4) and motion for preliminary injunction. ECF No. 6. That Preliminary Injunction was 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 No. 64 at p. 23.

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.*

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts' preliminary injunction pending appeal in the United States First Circuit Court of Appeals. *Department of Homeland Security v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). That same day, the District Court of Massachusetts ordered that its remedial order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (ECF No. 176) Defendants moved to clarify the Supreme Court's Order and, on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See 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. Legal framework governing removal of aliens, who have received final orders of removal, to third countries.

The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implanting the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official. The standard for "torture" is a high bar and is plainly not easily met.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (*see*, 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional, specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note. On March 30, 2025, the Department of Homeland Security ("DHS") issued guidance detailing its policy in this context, *see* March 30, 2025 Guidance, *attached hereto as* Exhibit D, following President Trump's Executive Order directing DHS to take action against the many aliens who stay in this country for years despite being subject to final orders of deportation, Executive Order 14165, 90 Fed. Reg. 8467, *attached hereto as* Exhibit E.

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. *See* Ex. D, Guidance at 1–2. A section applies for countries where the United States has not received such an assurance. In that case, the DHS policy provides that the alien is entitled to notice of the third county and an opportunity for a prompt screening of any asserted fear of being tortured there. *Id.* at 2.

IV. ARGUMENT

A. Because Petitioner is a Member of an Already-Certified, Non-Opt Out Class Action, Dismissal or Stay is Appropriate.

Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who ICE plans to remove to a third country. Because Petitioner is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide injunction, which the Supreme Court has now stayed finding that the Government is likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Given that dismissal is the appropriate remedy, Petitioner is not entitled to the relief sought in the Petition for Writ of Habeas Corpus.

As explained above, the District of Massachusetts entered a preliminary injunction prescribing the process to which *D.V.D.* class members were entitled before removal to a third country and certified a non-opt out class of which Petitioner is undisputedly a member. *See* Pet. ¶ 6 (ECF No. 1). The Supreme Court stayed the preliminary injunction but left certification of the

non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims and the Government would ultimately prevail.

First, this Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, the Petition challenges how Respondents should implement Petitioner's third country removal. Pet. ¶ 6 (ECF No. 1). That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts.

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Defendants are likely to succeed on the legal arguments presented in response to the instant habeas petition. Allowing Petitioner's habeas petition to proceed on the ground that ICE allegedly failed to follow the procedures set forth in the *D.V.D.* preliminary injunction in executing his removal to a third country and continuing to stay his removal to a third country would therefore be directly

contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* As a result, this Court should not require Respondents to provide the degree of process described in the *D.V.D.* preliminary injunction before removing Petitioner to a third country because the Supreme Court will, by all indications, eventually hold that such process is not required under the law.

Additionally, 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).

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). 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.").

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.

ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6). Second, following Supreme Court precedent, his claim that his detention violates the Due Process Clause 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 § 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. However, he is still eligible for ICE detention as he is an alien with a final order of removal who has been convicted of two crimes involving a controlled substance under 8 U.S.C. § 1227(a)(2)(B)(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 two weeks.

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 only thirteen days (as of the date of this filing), 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 thirteen days (as of this filing), 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 Romania or Australia is in process. *See* Exs. B–C (Third Country Removal Notices).

Because confinement for less than six months is presumptively reasonable, the Petition fails on the merits.

3. While Detained for Purposes of Being Removed, ICE Has to Comply with Post Order Custody Review Regulations Which Courts Have Found Satisfy Due Process Concerns.

Petitioner seeks to raise an Administrative Procedures Act claim in Count III of his Petition, a form of relief that is not appropriate in the context of a habeas petition. *Hubbard v. Carter*, 2025 WL 524117 at FN 1 (D. Md. BAH 24-729) ("To the extent [Petitioner] seeks to bring an APA claim against the use of the PATTERN system generally, he may not do so in the context of this § 2241. Such a challenge is appropriately raised in a regular civil action."); *See also*, *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004).

Notwithstanding the fact that an APA challenge regarding procedures afforded to Petitioner cannot be raised in a habeas petition, ICE has regulatory custody review obligations which govern Petitioner's detention going forward. *See*, 8 C.F.R. § 241.4.

8 C.F.R § 241.4 delegates to ICE the authority to detain aliens beyond the initial 90-day removal period. It establishes standards and procedures ICE must follow to do so. The regulation provides that ICE will periodically review an alien's records and consider whether to continue detention or release the alien. See 8 C.F.R. § 241.4(d), (h), (i) & (k). ICE must conduct the initial review "prior to the expiration of the removal period," *id.* § 241.4(h)(1), (k)(1)(i), or "as soon as possible thereafter," *id.* § 241.4(k)(2)(iv), unless it makes written findings that the "detainee's prompt removal is practicable and proper," or that there is other "good cause" for postponing the review, id. § 241.4(k)(3). If the review is postponed, ICE must use "reasonable care" to conduct the review "once the reason for delay is remedied or if the alien is not removed from the United States as anticipated at the time review was suspended or postponed." *Id.* ICE must "provide written notice to the detainee approximately 30 days in advance of the pending records review so that the alien may submit information in writing in support of his or her release." Id. § 241.4(h)(2). In addition, ICE must "forward by regular mail a copy of any notice or decision that is being served on the alien" to the alien's attorney if he or she is represented. *Id.* § 241.4(d)(3).

To obtain release, the alien must show that: his or her immediate removal is not practical or proper; he or she is not likely to be violent or "pose a threat to the community following release"; and he or she does not "pose a significant risk of flight" or of "violat[ing] the conditions of release." *Id.* § 241.4(e). The regulation requires ICE to consider "the likelihood that the alien is a significant flight risk or may abscond to avoid removal," "favorable factors, including ties to the United States such as the number of close relatives residing here lawfully," and factors bearing on the alien's

dangerousness, such as criminal history, disciplinary infractions, and past immigration violations, among others. *Id.* § 241.4(f).

Courts routinely conclude that compliance with the Post Order Custody Review ("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 CIV. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (Collecting cases supporting 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, procedures which are not owed at this current moment given his short detention, his petition should be denied. *See, e.g.*, *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews); *Perez v. Berg*, No. 24-CV-3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted,* No. CV 24-3251 (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".).

To the extent Petitioner seeks this Court to conduct its own custody review or to analyze ICE's custody determinations, as explained by another court, "[s]uch arguments are not proper here. It is ICE's province under 8 U.S.C. 1231(a)(6) to determine whether a removable alien such as [petitioner] should be detained past the 90-day removal period" … as Congress has "eliminated

judicial review of immigration-related matters for which ICE [] has discretion—such as flight-risk determinations." *Xie Deng Chen v. Barr*, No. 1:20-CV-00007-SL, 2021 WL 2255873, at *4 (N.D. Ohio Feb. 5, 2021). *See also Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (District court lacked jurisdiction over petitioner's "challenge to his short re-detention for removal" concerning whether his release was revoked in accordance with regulation because of 8 U.S.C. § 1252(g)); *Portillo*, 2022 WL 826941, at * 7 n. 9 (Explaining that the court lacks jurisdiction to review ICE's POCR decisions).

As such, Petitioner's claim that ICE's detention of Petitioner violates the Due Process Clause or the Administrative Procedures Act, relief not permitted under 28 U.S.C. § 2241, fails at this point because it is premature under the POCR regulations. 8 C.F.R. § 241.4.

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.

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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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2025, I filed and served the foregoing and a proposed order via CM/ECF.

/s/
Michael J. Wilson