IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TOUNI GHAMELIAN,	*	
	*	
Petitioner,	*	
	*	
v.	*	No. 1:25-cv-2106-SAG
	*	
NIKITA BAKER, *et al.*,	*	
	*	
Respondents.	*	

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MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS, MOTION TO DISMISS OR STAY

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I. INTRODUCTION

Kristi Noem, Secretary of the U.S. Department of Homeland Security and Nikita Baker, Director, Baltimore Field Office, U.S. Immigration and Customs Enforcement ("Respondents"), by and through counsel, Kelly O. Hayes, United States Attorney for the District of Maryland, Thomas F. Corcoran and Michael J. Wilson, Assistant United States Attorneys for that district, hereby respond to the Petition filed by Touni Ghamelian ("Petitioner").

The Court should deny Petitioner Writ of Habeas Corpus and enter an Order dismissing his Petition because this Court lacks subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). The two independent bases to deny, and ultimately dismiss, this Petition jurisdictionally include (1) 8 U.S.C. §1252(b)(9), which limits judicial review of questions of law and fact arising from review of judicial orders of removal to the appropriate court of appeals, not district courts, and (2) 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). Finally, 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).

II. FACTUAL BACKGROUND

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

Petitioner is a native and citizen of Iran, who entered the country on December 4, 1986 as a refuge and thereafter became a lawful permanent resident. **Exhibit A** (Notice to Appear dated December 3, 1997). On October 22, 1996, Petitioner was convicted in the Superior Court of California, County of Los Angeles, for voluntary manslaughter and was thereafter sentenced to three years' incarceration. *Id.* On December 3, 1997 Petitioner was issued a Notice to Appear (Form I-862) which initiated removal proceedings against him. *Id.* On April 30, 1998, a United States Immigration Judge of the Executive Office of Immigration Review ("IJ") ordered Petitioner removed to Spain or, if Spain would not accept him, to Iran. **Exhibit B** (Order of the Immigration Court). Additionally, and notably, the immigration judge denied Petitioner's request for withholding of removal to Iran in his oral ruling. **Exhibit C** (IJ Hearing Transcript). On July 27, 1998, Petitioner filed an appeal with the Board of Immigration Appeals ("BIA") which was subsequently dismissed on February 10, 2000. **Exhibit D**, BIA Appeal Decision. Petitioner appealed the BIA's Decision to the Ninth Circuit Court of Appeals, and on May 31, 2000, the Ninth Circuit Court of Appeals dismissed Petitioner's appeal due to lack of jurisdiction and denied Petitioner's stay of removal. **Exhibit E** (Ninth Circuit Court of Appeals opinion). Petitioner then filed a motion to reopen his immigration proceedings which was denied on May 9, 2001. **Exhibit F**, BIA Order. He was served with a Form I-205 Warrant of Removal/Deportation on April 3, 2003 indicating he was to be removed as a result of his aggravated felony conviction. **Exhibit G** (2003 Warrant of Removal). Notwithstanding being subject to a final order of removal since 2003,

Petitioner has remained in the United States on supervised release. *Id.*; **Exhibit H** (Notice of Revocation of Release).

On June 28, 2025, agents with United Staes Immigration and Customs Enforcement ("ICE") apprehended Petitioner at his home in Gaithersburg, Maryland. *Id.* ¶ 37. That same day, Petitioner was served with notices that his order of supervision was revoked, and that ICE intends to remove him to Spain or Mexico. *See* **Exhibit I**; (Notice of Removal to Mexico); and **Exhibit J** (Notice of Removal to Spain). In the Order of Supervised Release revocation, the Acting Baltimore ICE Field Office Director ("AFOD") 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 review by the Government of Spain and Mexico for the issuance of a travel document to facilitate your removal from the United States." **Ex. H** (Notice of Revocation). The notice also provided the regulatory basis for detention (8 C.F.R. §§ 241.4 & 241.13) and notified Petitioner of the post-order custody review processes afforded him. *Id.* The Notice explained that Petitioner would be given an interview at which he could "respond to the reasons for the revocation" of supervised release and "may submit any evidence or information you wish to be reviewed." *Id.* It explained that ICE would provide notification "within approximately three months" of a new review if Petitioner was not released after his informal interview. *Id.*

On July 1, 2025, Petitioner filed a Petition for Writ of Habeas Corpus. ECF No. 1. That same day, the Court entered Amended Standing Order 2025-01, which enjoined the Respondents from removing the Petitioner from the continental United States, and held a status conference with the parties wherein the parties agreed to a briefing schedule. ECF No. 2, 4–5. 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. 5.

Petitioner is currently being detained in the Houston Contract Detention Facility in Houston, Texas.

III. LEGAL STANDARDS

A motion to dismiss based on lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) raises the question of whether the court has the competence or authority to hear and decide a particular case. *See Davis v. Thompson*, 367 F. Supp. 2d 792, 299 (D. Md. 2005). As a result, the court "generally may not rule on the merits of a case without first determining that 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 plaintiff bears the burden of proving that subject-matter jurisdiction exists. *See 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 'spring[s] 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 (some internal quotation marks omitted). For that reason, "[t]he objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any stage in the litigation, even after trial and the entry of judgment." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006) (citing Rule 12(h)(3)).

When a defendant challenges subject-matter jurisdiction, the court "is to regard the pleadings as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Evans*, 166 F.3d at 647 (quoting *Richmond, Fredericksburg & Potomac R. Co.*, 945 F.2d 765, 768 (4th Cir. 1991)). The court may properly grant a motion to dismiss for lack of subject-matter jurisdiction "where a claim fails to allege facts upon which the court may base jurisdiction." *Davis*, 367 F. Supp. 2d at 799.

IV. ARGUMENT

A. 8 U.S.C. § 1252(b)(9) Bars Relief and Review.

First and foremost, Petitioner has a final order of removal to Spain, or alternatively Iran. He does not have a withholding of removal to Iran or deferral of removal to Iran based upon Article III of Convention Against Torture as alleged throughout his Petition. See, ECF 1 at ¶¶ 32 FN 1; 11-30; Count I and II. In his Petition, Petitioner attempts to seek judicial review of his final order of removal to Spain, or alternatively to Iran, by seeking to stay his removal absent "notice of the country of intended removal or meaningful opportunity to be heard on a fear claim" because it violates the Due Process Clause and regulations implementing the Convention Against Torture. ECF 1 ¶ 3. This Court lacks jurisdiction to order such relief

In passing the REAL ID Act, Congress prescribed a single path for judicial review of orders of removal: "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5); *see also Verde-Rodriguez v. Att'y Gen. U.S.*, 734 F.3d 198, 201 (3d Cir. 2013). The REAL ID Act further provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction with section 1252(b)(9), section 1252(a)(5) expresses Congress's intent to channel and consolidate judicial review of every aspect of removal proceedings into the petition-for-review process in the Courts of Appeals. H.R. Conf. Rep. No. 109-72, at 174–75; *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress's "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)" as part of a petition for review).

In fact, "most claims that even relate to removal" are improper if brought before the district court. *E.O.H.C. v. Sec. U.S. Dep't of Homeland Sec.* 950 F.3d 177, 184 (3d Cir. 2020); *Fabian A. v. Dep't of Homeland Sec.*, No. 21-1384, 2021 WL 3486905, at *2 (D.N.J. Aug. 9, 2021); *Gregory E. v. Warden of Essex Cty. Corr. Fac.*, No. 19-19287, 2020 WL 3129541, at *2 (D.N.J. June 12, 2020); *see also Reno v. Am.-Arab Anti-Discrimination Comm.* ("AADC"), 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an "unmistakable zipper clause," and defining a zipper clause as "[a] clause that says 'no judicial review in deportation cases unless this section provides judicial review'"); *Vasquez v. Aviles*, 639 F. App'x 898, 900–01 (3d Cir. 2016); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) ("Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition-for-review] process.").

In this case, Petitioner did just that. On April 30, 1998, he was ordered removed to Spain, or if Spain would not accept him, Iran, by an immigration judge, who additionally denied his request for withholding of removal. In 1999, he appealed that decision to the Board of Immigration Appeals ("BIA"), which affirmed the immigration judge's decision. He appealed that BIA decision to the Ninth Circuit Court of Appeals that dismissed his appeal. Finally, in 2001 he moved to reopen his immigration after his appeal was also denied.

That should resolve this claim for relief. Petitioner has a final order of removal to Spain, and if Spain does not accept him, Iran. He thoroughly exhausted all appellate processes to vacate or stay the execution of that Order. None was successful. His removal proceedings are administratively final. He cannot now challenge his removal order or try to have this Court order more processes attendant to the removal order. Thus, to the extent Petitioner seeks relief from this

Court for additional processes or procedures regarding his final order of removal, this relief should be denied. The Petition should be dismissed for lack of subject matter jurisdiction.

B. 8 U.S.C. § 1252(g) Bars Judicial Review of the Petition.

Petitioner's claims also run headlong into the independent jurisdictional bar contained in 8 U.S.C. § 1252(g). Therefore, the Petition should be denied and dismissed on this ground, too. Federal law precludes a district court from reviewing the Attorney General's execution of orders of removal. 8 U.S.C. § 1252(g).

Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . execute removal orders against any alien." 8 U.S.C. § 1252(g). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.* Petitioner's "requested relief, a stay from removal, would necessarily impose a judicial constraint on immigration authorities' decision to execute the removal order, contrary to the purpose of § 1252(g)." *Viana v. President of United States*, No. 18-CV-222-LM, 2018 WL 1587474, at *2 (D.N.H. Apr. 2, 2018), *aff'd sub nom. Viana v. Trump*, No. 18-1276, 2018 WL 11450369 (1st Cir. June 18, 2018); *Mapoy v. Carroll*, 185 F.3d 224 (4th Cir. 1999).

The Fourth Circuit has held that courts lack jurisdiction over actions stemming from § 1252(g). *Mapoy*, 185 F.3d at 230. In *Mapoy*, the petitioner filed a habeas action under 28 U.S.C. § 2241 and sought a preliminary injunction staying his removal while he attempted to reopen proceedings before the BIA and adjust his status based on his marriage to a U.S. citizen. 185 F.3d 224, 225–26 (4th Cir. 1999). The Fourth Circuit reversed the lower court's grant of the injunction, holding that "Congress could hardly have been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252." *Id.* at

230. The Court further noted that Section 1252(b) provided the only avenue for review, but even then only allowed review from the BIA to the courts of appeal. *Id.*; *Nasrallah v. Barr,* 590 U.S. 573, 579 (2020) (noting how, with the passage of the REAL ID Act of 2005, Section 1252(b) was amended to funnel all "issues arising from a final order of removal" to the immigration courts with "direct review in the courts of appeals," and thereby "eliminating review in the district courts").

In sum, the statutory scheme here forecloses any habeas review under 2241 that would stay or to enjoin the execution of a removal order. *Id.*; *see also Loera Arellano v. Barr*, 785 Fed. Appx. 195 (4th Cir. 2019) (affirming dismissal of habeas action seeking stay of removal); *Futeryan-Cohen v. United States INS*, 34 Fed. Appx. 143, 145 (4th Cir. 2002) (reversing district court's grant of habeas relief to stay order of deportation and ordering dismissal); *Fernandez v. Keisler*, 502 F.3d 337, 346 (4th Cir. 2007) (holding that the provision of the INA channeling judicial review through courts of appeal "expressly eliminate[s] district courts' habeas jurisdiction over removal orders"). The statutory scheme restricts the availability and scope of judicial review of removal orders by expressly precluding habeas corpus jurisdiction and channeling review of such orders to the courts of appeals as "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). The statute provides that review of all questions "arising from any action taken or proceeding brought to remove an alien" shall be available only through a petition for review in the appropriate court of appeals. 8 U.S.C. § 1252(b)(9).

Congress did not give courts the ability to stay removals or reopen removal orders, and in fact, specifically stripped district courts of the ability to interfere with ICE's execution of removal orders. As such, Petitioner's request for a stay of removal or attempt to reopen his removal proceedings to assert Article III Convention Against Torture claims (See, ECF 1 at Count I and II) must be denied for lack of subject matter jurisdiction.

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 an aggravated felony after admission to the United States under 8 U.S.C. § 1227(a)(2)(A)(iii). 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 less than 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 eleven 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 eleven 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 Mexico or Spain is in process. *See* Notice of Revocation of Release, Third Country Removal Notice, Exhibits **H, I and J**.

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

3. ICE's revocation of release comports with regulation and the Constitution.

On June 28, 2025, ICE exercised its significant discretion to revoke Petitioner's Order of Supervised Release.

a) *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. Immigr. & Customs Enf't,* 553 F. App'x 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 ....").

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. *Id.* 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). These regulations apply to aliens who have "filed a motion to reopen immigration proceedings for consideration of relief from removal ... unless the motion to reopen is granted." 8 C.F.R. § 241.4(b)(1); *Rodriguez-Guardado*, 271 F. Supp. 3d at 335 ("The fact that petitioner's motion to reopen the removal proceedings remains pending does not lead to a different result" as to ICE's ability to effectuate removal pursuant to Section 1231).

b) *ICE complied with the POCR Regulations to arrest petitioner.*

Here, ICE Baltimore's Acting Field Office Director ("AFOD") Nikita Baker issued Petitioner a written revocation notice on or about June 28, 2025 explaining that ICE was revoking his release pursuant to 8 C.F.R. § 241.4/241.13 as it had determined that Petitioner could be removed from the United States pursuant to his final order of removal. *See*, **Exhibit H**. Per the revocation notice, AFOD Baker stated that "ICE has determined that you can be expeditiously removed from the United States pursuant to an outstanding order of removal against you.... You are subject to an administratively final order of removal. Your case is under current review by the Government of Spain and Mexico for the 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.*

In making this determination, AFOD Baker 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" 8 C.F.R. § 241.4(l)(2). Petitioner has not received a POCR review at this point because he has not been in custody for 90 days.

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 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 arrest and detention of Petitioner violated statute and regulation fails as ICE properly exercised its ample discretion in revoking Petitioner's release.

V. CONCLUSION

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

Respectfully submitted,

KELLY O. HAYES
United States Attorney

/s/

Thomas Corcoran (Bar No. 24894)
Michael J. Wilson (Bar No: 18970)
Assistant United States Attorneys
U.S. Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4800