IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Deivis Alexi Guzman Cruz, Petitioner, **v.** **Kristi Noem,** *et al.*, Respondents.	**Civil Case No. 1:25-cv-02256-PX**

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND CIVIL COMPLAINT AND MOTION TO DISMISS

The Court should deny the Petition[1] and enter an Order dismissing it 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(a)(5), which requires that habeas challenges to a final order of removal must be presented to the appropriate court of appeals, and (2) 8 U.S.C. §1252(g), which bars district court review of decisions by the Attorney General to execute removal orders.

Petitioner's attempts to get around these clear jurisdictional bars all fail. The Suspension Clause does not apply here because Petitioner is not seeking true habeas relief. And Petitioner is not entitled to new removal proceedings in immigration court just because he failed to raise his NACARA eligibility during his prior two removals or at any other point in his time here by

[1] The Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Civil Complaint (ECF No. 9) is referred to as the "Petition." Petitioner Deivis Alexi Guzman Cruz is referred to as the "Petitioner."

applying through the U.S. Citizenship and Immigration Services. For these reasons, the Court should dismiss the Petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen of El Salvador. ECF No. 9 ¶ 20. He first entered the United States on January 1, 1998. On March 11, 2009, he was served with a Notice to Appear (NTA) for being in violation of Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). On April 6, 2009, an Immigration Judge granted Petitioner a voluntary departure in lieu of removal, and on May 11, 2009, he returned to El Salvador. ECF No. 9 ¶ 20.

Petitioner subsequently reentered the United States illegally. On June 10, 2012, he was arrested by U.S. Border Patrol Agents, at or near Sells, Arizona. He was served with a Notice and Order of Expedited Removal and was removed to El Salvador on June 26, 2012. Exhibit A (June 2012 Notice and Order of Expedited Removal) & Exhibit B (June 2012 Departure Verification).

Petitioner then illegally entered the United States for a third time. On July 11, 2025, he was arrested by ICE and taken into custody. ECF No. 9 ¶ 24. On the same date, he was issued a Notice of Revocation of Release. Exhibit C. Petitioner has been notified that he is eligible for expedited removal under 8 U.S.C. § 1225. ECF No. 9 ¶ 29.

STANDARD OF REVIEW

"A motion to dismiss based on lack of subject matter jurisdiction pursuant to Rule 12(b)(1) raises the question of whether the court has the competence or authority to hear the case." *Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005). "Federal courts are courts of limited jurisdiction[,]" possessing "only that power authorized by Constitution and statute." *Robb Evans & Assocs., LLC v. Holibaugh*, 609 F.3d 359, 362 (4th Cir. 2010) (quoting *Kokkonen v. Guardian*

Life Ins. Co., 511 U.S. 375, 377 (1994)). The Petitioner, as the party asserting jurisdiction, bears the burden of establishing it. *Id.*

When the Respondent asserts that facts outside of the complaint deprive the court of jurisdiction, the Court "may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004). A Rule 12(b)(1) motion "must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009).

ARGUMENT

I. This Court Does Not Have Jurisdiction to Review the Reinstatement Order of the Previous Removal or Any Decisions Relating to the Petitioner's Removal.

Congress has created a streamlined process for the judicial review of removal orders. Through a series of amendments to the INA, Congress implemented the current system for judicial review of removal orders. Under current statutes, any challenge or attempt to seek judicial review of a final order of removal must be filed with a federal court of appeals, not a district court:

> 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, ***a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter***, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

8 U.S.C. §1252(a)(5) (emphasis added). As 8 U.S.C. §1252(a)(5) makes clear, even habeas challenges to a final order of removal must be presented to the appropriate federal court of appeals. Federal courts of appeals are the "sole and exclusive" forum for a review of an order of removal. *Id.*

The Supreme Court summarized the impact of 8 U.S.C. §1252(a)(5) in *Nasrallah v. Barr*, 590 U.S. 573 (2020):

> The Act also states that judicial review "of all questions of law and fact ... 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); *see* 110 Stat. 3009–610. In other words, a noncitizen's various challenges arising from the removal proceeding must be "consolidated in a petition for review and considered by the courts of appeals." *INS v. St. Cyr*, 533 U.S. 289, 313, and n. 37, 121 S.Ct. 2271, 150 L.Ed.2d 347 (2001). ***By consolidating the issues arising from a final order of removal, eliminating review in the district courts, and supplying direct review in the courts of appeals, the Act expedites judicial review of final orders of removal....***
>
> ***The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.*** *See* 119 Stat. 310, 8 U.S.C. § 1252(a)(5).

Id. at 579-80 (emphasis added). *See also Jahed v. Acri*, 468 F.3d 230, 233 (4th Cir. 2006) ("The REAL ID Act eliminated access to habeas corpus for purposes of challenging a removal order. 8 U.S.C. § 1252(a)(5). In doing so, it instructed that all such challenges should proceed directly to the Courts of Appeals as petitions for review.").

The removal order involved in this case is a reinstated order of removal. This type of removal order is designed for those situations where an alien unlawfully reenters the United States after having been removed or having departed voluntarily under an order of removal. Congress "has created an expedited process for aliens who reenter the United States without authorization after having already been removed." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). This process is set forth in 8 U.S.C. §1231(a)(5):

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

Id.

For this type of order to apply, "the agency obtains the alien's prior order of removal, confirms the alien's identity, determines whether the alien's reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order." *Johnson*, 594 U.S. at 530, citing 8 C.F.R. §§241.8(a)-(c), 1241.8(a)-(c). Congress specifically eliminated judicial review of the prior order of removal when it is reinstated under 8 U.S.C. §1231(a)(5): "the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed…". *Id.* As the Supreme Court has stated, "8 U. S. C. § 1231(a)(5) applies to 'all illegal reentrants,' and it 'explicitly insulates the removal orders from review,' while also 'generally foreclos[ing] discretionary relief from the terms of the reinstated order.'" *Johnson*, 594 U.S. at 530, quoting *Fernandez-Vargas v. Gonzales*, 540 U.S. 30, 35 (2006).

Challenges to reinstatement orders under 8 U.S.C. §1231(a)(5) can only be reviewed in federal courts of appeals pursuant to 8 U.S.C. §1252(a)(5). *See Lara-Nieto v. Barr*, 945 F.3d 1054, 1059 (8th Cir. 2019) ("Lara-Nieto argues that, because the circumstances surrounding the entry of the Removal Order constitute a 'gross miscarriage of justice,' the district court had jurisdiction to review DHS's order reinstating the Removal Order pursuant to § 1231(a)(5). We find his argument unpersuasive. Indeed, the relevant statute says that '[n]otwithstanding any other provision of law (statutory or nonstatutory) ... a petition for review filed with an appropriate court of appeals ... shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter.' 8 U.S.C. § 1252(a)(5). ***We have interpreted this to mean that the federal courts of appeals have exclusive jurisdiction to consider the propriety of orders reinstating prior orders of removal.***") (emphasis added); *Ovalle-Ruiz v. Holder*, 591 Fed.Appx.

397, 400 (6th Cir. Nov. 21, 2014) ("We have jurisdiction to review final orders of removal, and we treat reinstatement orders the same as removal orders for purposes of our jurisdiction. 8 U.S.C. § 1252(a)(5)..."); *Iracheta v. Holder*, 730 F.3d 419, 422 (5th Cir. 2013) ("This case arises from DHS's January 17, 2012 reinstatement of the 1999 removal order against Saldana. We treat this appeal as a petition for review of that order of reinstatement. *See* 8 U.S.C. § 1252(a)(5) (providing that a petition for review with the court of appeal is the 'sole and exclusive means for judicial review of an order of removal'). We clearly have jurisdiction over a petition for review of a reinstatement order."); *Ochoa-Carrillo v. Gonzales*, 446 F.3d 781, 782 (8th Cir. 2006) ("Thus, judicial review in the appropriate court of appeals is the 'sole and exclusive' means to review a § 1231(a)(5) order reinstating a prior removal order, and § 106(c) of the REAL ID Act mandated the transfer of Ochoa-Carrillo's habeas petition to this court."); *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1162 (10th Cir. 2004) ("We begin by observing that Berrum–Garcia's resort to a habeas corpus petition in the district court was incorrect. In 8 U.S.C. § 1252 Congress has provided an avenue for direct judicial review of INS removal orders in the courts of appeals. Although the text of § 1252(a)(1) speaks of judicial review for 'order[s] of removal,' we have previously held that this provision gives us jurisdiction to hear direct appeals from reinstatement orders entered pursuant to § 1231(a)(5)."). *Cf. Martinez*, 86 F.4th at 568 ("Our Court has previously exercised jurisdiction over petitions filed by aliens subject to reinstated removal orders, accepting the Government's position that a reinstatement decision is an 'order of removal.'") (citing *Velasquez-Gabriel v. Crocetti,* 263 F.3d 102, 105 (4th Cir. 2001)).

In sum, Congress has vested exclusive jurisdiction over the judicial review of removal orders in federal courts of appeals, not district courts, pursuant to 8 U.S.C. §1252(a)(5). Habeas, constitutional, and other challenges to removal orders—including reinstated ones—must be

judicially reviewed by federal courts of appeals rather than district courts. Accordingly, this Court should dismiss Petitioner's petition for lack of jurisdiction.

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

Petitioner's claims and request for emergency relief also runs headlong into the independent jurisdictional bar contained in §1252(g). Therefore, the Petition should be denied and dismissed on this ground, too.

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory)."[2] *Id.* Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) was "'directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion,'" to protect "'no deferred action' decisions and similar discretionary decisions." *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3rd Cir. 2020) (quoting *Reno v. Am.-Arab Discrimination Comm.*, 525 U.S. 471, 485). This limitation exists for

[2] Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding "(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law." REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)'s reference to the "Attorney General" includes the Secretary of Homeland Security. 6 U.S.C. § 202(3); *see also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3–4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

"good reason": so "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC.*, 525 U.S. at 483–84. In addition, through § 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

Section 1252(g) prohibits district courts from hearing challenges to decisions and actions about *whether* and *when* to commence removal proceedings. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002) ("We construe § 1252(g) . . . to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding."). Circuit courts have held § 1252(g) applies to the discretionary decision to execute a removal order. *See Tazu*, 975 F.3d at 297–99 ("The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order."); *Rauda*, 55 F.4th at 777–78 ("No matter how [petitioner] frames it, his challenge is to the Attorney General's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review."); *E.F.L.*, 986 F.3d at 964–65 (holding that § 1252(g) barred review of the decision to execute a removal order while an individual sought administrative relief); *Camerena v. Director, Immigration and Customs Enforcement*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (holding that § 1252(g) bars review of challenges to the discretionary decision execute a removal order); *Arce v. United State*s, 899 F.3d 796, 800 (9th Cir. 2018) (finding that § 1252(g) would bar claims asking the Attorney General to delay the execution of a removal order); *Hamama v. Homan*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under

the Attorney General's decision to execute removal orders and is not subject to judicial review."). Under the plain text of § 1252(g), the provision must apply equally to decisions and actions to *commence* proceedings that ultimately may end in the execution of a final removal order. *See Jimenez-Angeles*, 291 F.3d at 599; *see also Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that "directly challenge[d] [the] decision to commence expedited removal proceedings"); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (determining that § 1252(g) prohibited review of an alien's First Amendment retaliation claim based on the Attorney General's decision to put him into exclusion proceedings).

In this case, DHS is removing Petitioner under a reinstated removal order. Because district courts are barred from reviewing the execution of such a removal order, the Petition should be dismissed. See *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *4 (E.D. La. Feb. 24, 2025) ("Respondents contend that this Court lacks subject-matter jurisdiction pursuant to 8 U.S.C. § 1252(g), because Petitioner's claims 'arise from' ICE's execution of Petitioner's reinstated final order of removal. … The Court agrees with Respondents."); *Mendez-Tapia v. Sonchik*, 998 F. Supp. 1105, 1107 (D. Ariz. 1998) ("Even if the petition raised a claim of gross miscarriage of justice sufficient to constitute an issue of constitutional significance, the district court would have no jurisdiction to review the reinstated 1987 deportation order. Review of deportation orders is available only in the Courts of Appeals and not in the district courts and, therefore, constitutional habeas review would not be in furtherance of the jurisdiction of this Court.") (internal citations omitted); *Lopez-Herrera v. I.N.S.*, 203 F.3d 835 (10th Cir. 2000) (holding the court lacks jurisdiction under 8 U.S.C. § 1252(g) where Petitioner "concedes that he was deported from the United States in March 1991 under a valid final order of deportation and reentered the United

States illegally later the same year."). Accordingly, this Court lacks subject matter jurisdiction to order the relief sought in the Petition.

III. Petitioner Is Not Entitled to a Full Removal Proceeding Now and He Could Have Applied for NACARA Relief At Any Time.

Petitioner asks this Court to order DHS to issue him a Notice to Appear and refer him to removal proceedings. ECF No. 9 at 16 (paragraph (e)). But Petitioner is not entitled to another full removal proceeding before his third removal. Congress streamlined the removal of aliens who have been removed (or voluntarily removed) from the United States and then return illegally to the United States. Under 8 U.S.C. §1231(a)(5), the prior order of removal that is reinstated is "not subject to being reopened or reviewed..." *Id.* Aliens being removed pursuant to 8 U.S.C. §1231(a)(5) are generally removed without any further legal proceedings:

> Congress has established a streamlined process for removal of noncitizens who return illegally to this country after a previous removal order has been entered against them. In such cases, the prior adjudication of removal remains final and conclusive: The "prior order of removal is reinstated from its original date," and is "not subject to being reopened or reviewed." 8 U.S.C. § 1231(a)(5). Nor may the noncitizen pursue discretionary relief, like asylum. *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 34–35 & n.4, 126 S.Ct. 2422, 165 L.Ed.2d 323 (2006). Implementing regulations track the statute, providing that a noncitizen who unlawfully reenters after being ordered removed "shall be removed from the United States by reinstating the prior order," without any right to a hearing before an IJ. 8 C.F.R. § 241.8(a). ***So in the ordinary case, a noncitizen facing a reinstated removal order is removed from the country without further legal proceedings.***

Tomas-Ramos v. Garland, 24 F.4th 973, 976 (4th Cir. 2022) (emphasis added). *See also Martinez*, 86 F.4th at 564-65 ("An immigration officer simply obtains the alien's prior order of removal, confirms the alien's identity, and determines whether the alien's reentry was unauthorized... ***The alien has no right to a hearing before an immigration judge.***") (emphasis added) (citing 8 U.S.C. §1231(a)(5) and 8 C.F.R. §241.8). Petitioner's desire to seek special rule cancelation of removal under NACARA does not change this conclusion.

Though Petitioner's potential NACARA eligibility is meaningless for this Court's jurisdictional analysis, it is worth noting that Mr. Guzman is incorrect in asserting that he must first receive an NTA to raise his eligibility. Mr. Guzman could have applied for cancelation under NACARA either (1) during his prior removal proceedings or (2) at any other time by submitting an application to USCIS. Specifically, Petitioner could have submitted a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA)). *See* U.S. Citizenship and Immigration Services, I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA)), available at https://www.uscis.gov/i-881 (last accessed July 20, 2025) (application form described above available at: https://www.uscis.gov/sites/default/files/document/forms/i-881.pdf)). Petitioner's decision to not previously raise his NACARA eligibility—including during his prior two removals—does not somehow entitle him to new proceedings before an immigration judge.

IV. The Suspension Clause Does Not Provide a Workaround for This Court's Lack of Jurisdiction.

As explained above, 8 U.S.C. § 1252 bars this Court from reviewing the claims in the Petition. Petitioner argues that the Suspension Clause in the Constitution provides a workaround, allowing the Court to decide Petitioner's claims on the merits. ECF No. 9 ¶ 48. But given the relief sought in the Petition, the Suspension Clause is not implicated. "[B]ecause Petitioners' removal-based claims fail to seek relief that is traditionally cognizable in habeas, the Suspension Clause is not triggered." *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018). As in *Hamama*, Petitioner here is not seeking simple release. Rather, he asks this Court to enjoin his removal and to order DHS to issue him a Notice to Appear. ECF No. 9 at 15-16. "Because the common-law writ could not have granted Petitioners' requested relief, the Suspension Clause is not triggered

here." *Hamama*, 912 F.3d at 875–76; *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("This principle dooms respondent's Suspension Clause argument, because neither respondent nor his *amici* have shown that the writ of habeas corpus was understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result. The writ simply provided a means of contesting the lawfulness of restraint and securing release."); *Rauda v. Jennings*, 55 F.4th 773, 779 (9th Cir. 2022) ("Recognizing the problem that § 1252 poses to his attempt to secure immediate review of the BIA's stay denial, Matias attacks that statute. He argues that the Constitution's Suspension Clause gives what § 1252 purports to take away, and thus Congress cannot have properly removed our jurisdiction over his habeas claim. But the Suspension Clause does not preserve judicial review in this case because only an extreme and unwarranted expansion of the habeas writ would encompass Matias's requested relief."). Because the relief Petitioner seeks here—namely, an order enjoining his removal and an order compelling DHS to issue Petitioner a Notice to Appear—is far outside the traditional habeas writ, the Suspension Clause is not triggered.

V. ICE Acted Consistently with its Post Order Custody Regulations when it Revoked Petitioner's Order of Supervised Release and Detained Him.

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 supervised release for individuals with final orders of removal.

The regulatory provisions concerning revocation of orders of supervised 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 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); *see also* Notice of Revocation of Release, Exhibit C. 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).

Here, the Acting Field Office Director ("AFOD") issued Petitioner a written Notice of Revocation of Release on July 11, 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 C. The 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 current review by the Government of El Salvador for issuance of a travel document." *Id.* The notice also provided the regulatory basis for detention (8 C.F.R. §§ 241.4/241.13) and notified Petitioner of the post-order custody review processes afforded him. *Id.* The Notice explained that Petitioner would be given an interview at which he could "respond to the reasons for the revocation" of supervised release and "may submit any evidence or information you wish to be reviewed." *Id.* It explained that ICE would provide notification "within approximately three months" of a new review if Petitioner was not released after his informal interview. *Id.* In making this determination, Baltimore's AFOD 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 Petitioner's supervised 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 AFOD "to make a formal determination that h[er] revocation was in the public interest[,]" instead, the AFOD 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). As such, ICE has ample justification per its 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 an individual's constitutional rights while detained while executing a removal order. *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 demonstrate that ICE violated any specific procedures under the applicable regulations—§ 241.4/§ 241.13—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).

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

VI. A Habeas Petition Is Not the Proper Vehicle to Challenge the Notice of Revocation of Release.

Finally, habeas relief is not cognizable for challenges to administrative procedures that ICE allegedly failed to follow. In Count Three, Petitioner challenges the Government's decision to revoke Petitioner's order of supervision and USCIS's termination of discretionary deferred action. ECF No. 9 ¶¶ 61-66. Such claims are not cognizable on review of a habeas petition. *See Hubbard v. Carter*, No. BAH-24-729, 2025 WL 524117 (D. Md. Feb. 18, 2025). In *Hubbard*, Judge Hurson explained that a habeas petitioner who seeks to challenge the application of rules, or the "substance of any eventual decision" must bring an APA action, not a habeas petition. *Id.* at *3 n.1 (quoting *Richmond v. Scibana*, 387 F.3d 602, 605 (7th Cir. 2004)).

Here, Petitioner does not bring an APA claim. *See* ECF No. 9 ¶¶ 61-66. Rather, he alleges "regulatory violations" by the Government, without providing the basis for any relief. This claim should therefore be dismissed.

CONCLUSION

WHEREFORE, the Respondents respectfully request this Court enter an Order DENYING and DISMISSING the Petition.

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Respectfully Submitted,

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