IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DEIVIS ALEXI GUZMAN CRUZ ***Petitioner,*** **v.** **KRISTI NOEM, et al.** ***Respondents.***	**Case No: 1:25-CV-2256-PX** **REPLY TO RESPONDENTS' OPPOSITION AND MOTION TO DISMISS**

REPLY TO RESPONDENTS' OPPOSITION AND MOTION TO DISMISS

Petitioner Deivis Alexi Guzman Cruz ("Mr. Guzman"), files this reply to Respondents' Opposition to Petitioner's Amended Petition and Motion to Dismiss. *See* ECF 10. Respondents assert that this Court has no subject matter jurisdiction over Mr. Guzman's petition, alleging that 8 U.S.C. §§1252(a)(5) and (g) bar judicial review of the petition. *See* ECF 10-1 at 1. Respondents are incorrect, and this Court can exercise its jurisdiction over Mr. Guzman's petition.

LEGAL FRAMEWORK AND STATEMENT OF THE CASE

8 U.S.C. § 1252(a)(5) states, in relevant part, that "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 . . . ." Separately, 8 U.S.C. § 1252(g) provides, in relevant part, that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

However, the Suspension Clause forbids suspension of the writ of habeas corpus "unless

when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I, § 9, cl. 2. Respondents move to dismiss, asserting that this Court lacks subject matter jurisdiction over Mr. Guzman's petition based on 8 U.S.C. §§ 1252(a)(5) and (g), and that the Suspension Clause is inapplicable. *See generally* ECF 10-1. Respondents do not allege that this Court lacks personal jurisdiction over Mr. Guzman, Respondents, or a person able to effectively release Mr. Guzman if the Court so ordered. *See id.* Rather, Respondents allege that because of the nature of Mr. Guzman's petition and requested relief, judicial review of Respondents' actions to detain and remove Mr. Guzman is entirely precluded.

ARGUMENT

This action is brought in habeas under 28 U.S.C. § 2241, which provides that the district court may grant a writ of habeas corpus to a prisoner if he "is in custody under or by color of the authority of the United States[.]" Such is the case here. The jurisdiction-stripping provisions of the Immigration and Nationality Act ("INA") contained at 8 U.S.C. § 1252 do not bar this action, as neither referenced by Respondents can preclude judicial review in habeas for constitutional deprivations of due process—both because they do not apply to the requested relief and/or because the Suspension Clause may be invoked to protect Mr. Guzman under these circumstances.

I. 8 U.S.C. § 1252(A)(5) DOES NOT BAR THIS ACTION OR, ALTERNATIVELY, THIS COURT SHOULD HOLD THE PETITION IN ABEYANCE FOR MR. GUZMAN TO PURSUE A PETITION FOR REVIEW.

Respondents first contend that § 1252(a)(5) specifically precludes judicial review of any action because it "makes clear [that] habeas challenges to a final order of removal must be presented to the appropriate federal court of appeals." ECF 10-1 at 3. "Habeas, constitutional, and other challenges to removal orders—including reinstated ones—must be judicially reviewed by federal courts of appeals rather than district courts." *Id.* at 6-7.

Petitioner agrees in principal that under 28 U.S.C. § 2241(a) and 8 U.S.C. §1252(a), the relevant Court of Appeals has jurisdiction to entertain a habeas petition and/or otherwise has authority to review petitions for review of orders of removal. However, Mr. Guzman's petition is not a direct challenge to the reinstatement of a prior removal order, but instead challenges the Respondents' decision to preclude any opportunity for him to present his application for special rule cancellation of removal under NACARA. *See* Amended Petition, ECF 9 at 15 (seeking the Court to declare that "the immigration detention and expedited removal of Mr. Guzman without an opportunity to apply for special rule cancellation of removal under NACARA Section 203 violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution"). The relief sought—either an order for DHS to issue a Notice to Appear ("NTA") *or* an order that the immigration court hold a hearing on his application—is specifically tailored to address the alleged due process violation, not to challenge the validity of the reinstated removal order. And ultimately, Mr. Guzman seeks to cure this violation of due process or "order that he be released from Respondents' custody[.]" ECF 9 at 16.

However, to provide clarification to the parties and because Respondents maintain that the Court of Appeals is the proper venue in their arguments under both 8 U.S.C. § 1252(a)(5) and (g), *see* ECF 10-1 at 6, 9, with this Reply Mr. Guzman will file a separate motion alternatively seeking to have this case held in abeyance while he petitions the Fourth Circuit Court of Appeals for review, as the Respondents allege is appropriate.

II. 8 U.S.C. § 1252(G) DOES NOT BAR THIS ACTION.

Respondents next assert that 8 U.S.C. § 1252(g) precludes judicial review here because Mr. Guzman's challenge falls within the enumerated bars, namely because it is both a challenge to the commencement of proceedings and the reinstatement of the prior order of removal. As noted

above, Mr. Guzman does not challenge the reinstated order of removal on its face, rather he is challenging the decision by Respondents to effectively preclude him from any venue to review his application for special rule cancellation of removal. And there is also a presumption that Respondents are acting within their lawful authority when they reinstate a removal order or exercise discretion *not* to commence removal proceedings. *See Mestanek v. Jaddou*, 93 F.4th 164, 172 (4th Cir. 2024) ("We have long recognized that public officials enjoy a 'presumption of regularity' in the performance of their official duties." (citation omitted)). But in this case, however, Respondents have reinstated the prior removal order and avoided proceedings under 8 U.S.C. § 1229a specifically to prevent Mr. Guzman from reaching the appropriate forum for relief, despite notice that he is eligible for relief that can only be obtained before the immigration court. These actions violate Mr. Guzman's right to due process, and the jurisdiction-stripping provisions—to the extent they would deprive this Court of its authority to provide relief through habeas—do not survive such a constitutional challenge. It is for this reason that Mr. Guzman may invoke the Suspension Clause.

Respondents counter that the Suspension Clause is inapplicable because Mr. Guzman does not seek relief that is "traditionally cognizable in habeas." ECF 10-1 at 11 (quoting *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018)). But Respondents misstate the requested relief, that Mr. Guzman is only asking "this Court to enjoin his removal and to order DHS to issue him a Notice to Appear", *id.*, alleging that the relief falls so far outside the historical nature of the writ that the Suspension Clause does not apply. That is not so. Mr. Guzmen specifically seeks as an alternative to have a hearing ordered before the immigration court to review Mr. Guzman's NACARA eligibility, or if the Court "[f]ind[s] that if Respondents fail to provide the process due to Mr. Guzman so he may apply for relief from removal, *order that he be released from*

Respondents' custody[.]" ECF 9 at 16 (emphasis added)). Thus, by actually seeking his release, tempered by alternative curative options, Mr. Guzman's request to be released upon the failure of Respondents to cure the due process violation at issue does fall within the ambit of core habeas challenges.

Moreover, as the Supreme Court most recently clarified in *J.G.G. v. Trump*, "[r]egardless of whether the detainees formally request release from confinement, because their claims for relief 'necessarily imply the invalidity' of their confinement *and removal* under the [Alien Enemies Act], their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (emphasis added). Similarly to the challenge brought here, in spite of jurisdiction-stripping provisions, the Petitioners were "entitled to 'judicial review' as to 'questions of interpretation and constitutionality' of the Act as well as whether he or she 'is in fact an alien enemy fourteen years of age or older.'" *Id.* (quoting *Ludecke v. Watkins*, 335 U.S. 160, 163-64 (1948)). The *J.G.G.* decision thus clarifies that petitions to challenge the interpretation or constitutionality of the AEA, even if not seeking formal release from custody, still fall within the ambit of core habeas challenges for which the Suspension Clause may be invoked. *See J.G.G.*, 145 S. Ct. at 1007 (Kavanaugh, J., concurring) ("going back to the English Habeas Corpus Act of 1679, if not earlier, habeas corpus has been the proper vehicle for detainees to bring claims seeking to bar their transfers. *See* Habeas Corpus Act of 1679, 31 Car. 2, c. 2, §§11-12.").

This conclusion is also supported by the line of military tribunal cases, in which the Supreme Court held it "uncontroversial, [] that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (quoting *St. Cyr*, 533 U.S., 289, 302 (2001)). In those cases, detainees sought to challenge the

procedures applied by the military to effectuate their detention, not just seek their immediate release. This case within the context of the INA is no different.

The Court should take additional guidance from similar challenges to immigration detention: where a procedural due process violation may be cured without ordering a noncitizen released, that path is often taken. Indeed, "[d]istrict courts rightly favor conditional grants, which provide [the executive] with an opportunity to cure their constitutional errors, out of a proper concern for comity among the co-equal [branches]." *Gentry v. Deuth*, 456 F.3d 687, 692 (6th Cir. 2006); *see also Hechavarria v. Whitaker*, 358 F.Supp.227, 234-35 (W.D.N.Y. 2019) (discussing Court's preference for conditional writs of habeas corpus and the Court's authority to enforce them). Thus, where this Court has been presented a due process violation (prolonged unreviewed immigration detention) it did not order immediate release, it ordered a bond hearing. *See e.g. Jarpa v. Mumford*, 211 F.Supp.3d 706, 720 (D. Md. 2016) (ordering bond hearing to cure procedural due process violation of prolonged detention without adequate review (following *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). Such hearings lie within the power of the Court to craft relief specifically to avoid the unconstitutionality of statutory and regulatory schemes and to ensure due process protections—and the Court should similarly exercise its jurisdiction and authority here.

Here, Mr. Guzman is being deprived of a forum to present his application for special rule cancellation of removal under NACARA, an application to which the Judiciary, Congress, and the Executive have all over time established he is entitled. *See American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) (settlement agreement); NACARA, Pub. Law. 105-100 (1997) (establishing eligibility for ABC class members for cancellation of removal); 8 C.F.R. § 1240.61 (adopting the settlement agreement and NACARA procedures into federal

regulation). Ultimately, he is asking for this Court to order, as a cure to the due process violation, that he be given access to that forum, *see* ECF 9 at 16 (requesting the Court order DHS issue an NTA or the immigration court hold a hearing), or if Respondents fail to do so, order his release from custody, *id.* Contrary to Respondents' claims, such relief—including curative options to avoid release—are within the ambit of traditional core habeas petitions to which the Suspension Clause applies. *Cf. J.G.G.*, 145 S. Ct. at 1006 (Kavanaugh, J., concurring) ("all nine Members of the Court agree that judicial review is available"). And ultimately, as the Third Circuit in *Tazu v. Att'y. Gen.* noted, "Section 1252(g) does not sweep broadly. It reaches only these three specific actions, not everything that arises out of them." 975 F.3d 292, 297 (3d Cir. 2020).

III. A HEARING BEFORE THE IMMIGRATION COURT IS THE ONLY VENUE IN WHICH MR. GUZMAN CAN PURSUE HIS APPLICATION FOR SPECIAL RULE CANCELLATION UNDER NACARA 203.

Finally, Respondents claim that Mr. Guzman could apply for relief with USCIS, but they are mistaken. Respondents do not address the jurisdictional issue giving rise to this complaint, specifically that Mr. Guzman's application for relief under NACARA must be presented to the immigration court. *See* 8 C.F.R. § 1240.62(b)(2). And while he might have presented an application for NACARA during his previous removal hearing, it is likely that he did not even know he was eligible for the relief. In any case, the NACARA regulations contemplate that Mr. Guzman, having been previously ordered deported, must first reopen his removal proceedings and is ineligible to apply with USCIS. *See* 8 C.F.R. § 1003.43; *see Escobar v. Att'y. Gen.*, 186 Fed. App'x. 300 (3d Cir. 2006) (unpublished). But the regulations set a long-since passed deadline to do so. 8 C.F.R. § 1003.43(e)(1). This is why the Department of Homeland Security has a policy and practice of issuing a Notice to Appear to such NACARA-eligible noncitizens with previously executed removal orders. Therefore, because the immigration court is the only appropriate venue

to pursue relief from removal, exclusion from that forum violates Mr. Guzman's right to due process.

IV. ICE VIOLATED REGULATIONS IN REVOKING MR. GUZMAN'S RELEASE.

While not an essential element to the jurisdictional defenses raised by Respondents, it bears noting that Respondents' evidence confirms they have not complied with 8 C.F.R. § 241.4 in revoking Mr. Guzman's release, which was on an order of supervision with a pending U-visa application that remains viable. Indeed, the Notice of Revocation of Release shows that is signed by "Lawanda K. Charles"—an unknown person—over the line "(a)FOD Nikita Baker". *See* ECF 10-4. But 8 C.F.R. § 241.4(l) requires that, absent a violation of the conditions of release, only the district director or Executive Associate Commissioner may revoke an order of supervision. Here, it is not even clear that Nikita Baker is the district director or acting director, and in any case, the document is signed by an entirely unknown person. ECF 10-4; *see Eric Flack, Exclusive Access: 5 People Arrested In Maryland During ICE Raids As Nationwide Protests Continue*, WUSA9 (June 10, 2025) (quoting Vernon Liggins as the ICE Baltimore acting Field Office Director), available at https://www.wusa9.com/article/news/investigations/immigration-customs-enforcement-icedonald-trump-protests-crackdown-vernon-liggins/65-d5195b8b-0756-4a5f-9b76-2c507a911c8d; ; Press Release, *ICE Arrests Guatemalan Alien Charged With Girlfriend's Murder; Uncle, An Illegal Alien, Charged With Accessory*, ICE (Apr. 22, 2025) (quoting Vernon Liggins as the ICE Baltimore acting Field Office Director), available at https://www.ice.gov/news/releases/icearrests-guatemalan-alien-charged-girlfriends-murder-uncle-illegal-alien-charged. Thus, Respondents continue to fail to follow regulations in revoking release.

CONCLUSION

Respondents claim that Mr. Guzman only "asks this Court to order DHS to issue him a Notice to Appear and refer him to removal proceedings." ECF 10-1 at 10 (citing ECF 19 at 16 (paragraph (e)). But the requested relief includes two alternatives: "alternatively order Respondent Attorney General Pamela Bondi and the immigration court to otherwise hold an immigration court hearing for Mr. Guzman to establish his eligibility for special rule cancellation of removal under NACARA Section 203[,]" or, should the due process violation not be cured in this way, order Mr. Guzman released. ECF 9 at 16. These options, which do not require the Department of Homeland Security to commence removal proceedings, are available to the Court as curative relief. Such relief is similar in nature to when this Court orders a bond hearing through habeas to correct due process violations related to detention, bond hearings which the INA specifically precludes. *See supra*; 8 U.S.C. § 1226(c). Thus, ordering the hearing sought through this petition, which is already contemplated by NACARA and Respondents' own regulations, is a far less intrusive intervention by the judiciary into immigration affairs than ordering the Department of Justice to provide a constitutionally adequate bond hearing.

For all those reasons outlined above, this Court should find that it has subject matter jurisdiction over Mr. Guzman's petition.

Respectfully submitted,

/s/ Joseph Moravec
JOSEPH MORAVEC, Esq.
Blessinger Legal PLLC
7389 Lee Highway Suite 320
Falls Church, VA 22042
(703) 738-4248