

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

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SAHAND YOUSEFI NASRABADI,

Petitioner,

v.

MARCELLO VILLEGAS, et al.,

Respondent.


Civil Action No. 1:25-CV-00129-H


**RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner seeks his immediate release from immigration detention and an order of supervision. *See* ECF No. 10. As explained herein, Petitioner shows no entitlement to habeas relief, and he is not entitled to immediate release. The Court should deny the relief requested in the habeas petition.

**I. Factual Background**

**A. Petitioner is Subject to a Final Order of Removal.**

Petitioner is a citizen and national of Iran who entered the United States on December 8, 2010, as an immigrant. Pet. ¶ 1. On August 22, 2012, Petitioner was charged with 

 App. p. 7. However, on December 8, 2013, Petitioner pled guilty to and was convicted of Injury to a Child, Intentionally or Knowingly Causing Bodily Injury, a third-degree felony. App. p. 9.

Petitioner was served with a Notice to Appear for the purposes of instituting removal proceedings against him on October 11, 2013. App. pp. 16-18. Thereafter on October 21, 2013, Petitioner was ordered removed to Iran. App. p. 20. Petitioner did not file an appeal with the Board

of Immigration Appeals (“BIA”) or seek any type of asylum or CAT protection. After 98 days in ICE custody, Petitioner was released on an order of supervision. App. p. 3.

On June 20, 2025, Petitioner filed a motion to reopen his immigration proceedings to reconsider the removal order. App. p. 3. The immigration court denied the motion to reopen as untimely on June 30, 2025, concluding that: 1) No errors occurred during the first hearing due to Petitioner’s purported inability to understand English, the record is clear that Petitioner understood English and clearly expressed himself in English; 2) Petitioner was properly found removal for a crime involving moral turpitude and a for a crime of child abuse; 3) The record from the original hearing is clear that Petitioner declined to apply for any relief from removal and expressed to the court that he no longer wanted to be in the United States. App. pp. 25-26. Petitioner filed an appeal of the denial of his motion to reopen with the BIA on July 24, 2025.

On June 23, 2025, officers from the U.S. Immigration & Custom Enforcement (“ICE”) detained Petitioner. App. p. 3, ¶ 11. Petitioner then filed a Petition for Writ of Habeas Corpus on July 15, 2025, seeking release from detention and notice and opportunity to contest removal to a third country that is not his country of nationality. Petitioner filed an amended petition and a request for injunctive relief on July 30, 2025. ECF No. 10.

**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 (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 their motion for preliminary injunction. ECF No. 6. The preliminary injunction was national in effect, the class certification certified a non-opt out class, and the order established 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 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); App. p. 33. 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. *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.

## II. Argument & Authorities

### A. Petitioner's Due Process Claim Regarding Third Country Removal Fails.

Petitioner due process claim based on the absence of any meaningful notice and opportunity to present a fear-based claim prior to deportation to a third country fails. ECF. No. 10.

¶ 75. That claim fails because any such claim is premature. A procedural due process claim has two elements: (1) notice, and (2) an opportunity to be heard. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). And here, Petitioner has not demonstrated he has or will be deprived of these requirements when it comes to his removal to an alternate third country. Although DHS recently re-detained Petitioner subject to the final order of removal, and in preparation for removal to Iran, there is no decision that Petitioner's removal will be to a third country. App. p. 4, ¶15. Because DHS is still in the process of seeking travel papers to Iran, it has not yet begun investigating a third country of removal. App. p. 4, ¶14. Therefore, the claim challenging lack of "notice" of such removal is not ripe for judicial review. *See Texas v. United States*, 523 U.S. 296, 300 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated or indeed may not occur at all." (cleaned up)).

**1. Because Petitioner is a Member of an Already-Certified, Non-Opt Out Class Action, Dismissal is Appropriate.**

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* ECR No. 10, ¶ 68. The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class intact. Petitioner is a member of the non-opt out *D.V.D.* certified class because he is an individual subject to a final order of removal who ICE may, in theory, ultimately seek 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, this Court should dismiss the action.

As an initial matter, 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. ECF No. 10, ¶¶ 37-51; 74-77. 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.*

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.”). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982).

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 Petitioner pursues here. *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). Thus, dismissal is warranted.

**2. 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. *P.P.G. Indus. Inc. v. Cont’l Oil Co.*, 478 F.2d 674 (5th Cir. 1973)). Here, staying this case avoids the potential for conflicting decisions on central issues. Fed. R. Civ. P. 23(b)(1)(A). 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. 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.

**B. 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) and ICE followed all policies in re-detaining Petitioner.

**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).

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 is present in the country illegally. *See* 8 U.S.C. § 1227(a)(1)(B). 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's detention is therefore lawful.

**2. Petitioner's Claim is Premature as He Has Only Been Detained for 55 Days.**

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 55 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.

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.*

Here, Petitioner’s Due Process challenge fails as he has only been detained for 55 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 is preparing a travel document request to Iran as well as the possibility of a third-country removal if the Iranian travel document is not issued. 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 23, 2025, ICE exercised its significant discretion to revoke Petitioner's Order of Supervised Release. In his Petition, Petitioner raises claims related to ICE's decision to revoke his 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 has 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. This can occur for two reasons: the noncitizen violates the conditions of release, § 241.4(l)(1), or ICE determines in its discretion to revoke release, § 241.4(l)(2). If release is revoked due to a violation of conditions under § 241.4(l)(1), the noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody, to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the revocation of release notification. 8 C.F.R. § 241.4(l)(1).

The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. 8 C.F.R. § 241.4(l)(2). Factors allowing for the revocation of release in the discretion of ICE include: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) revocation is appropriate to enforce a removal order or to commence

removal proceedings; and (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. 8 C.F.R. §§ 241.4(l)(2) (i–iv).

Petitioner’s revocation of release was pursuant to § 241.4(l)(2), at the discretion of ICE, to enforce his removal order. The regulations do not require notice to Petitioner. Nonetheless, ICE has provided Petitioner notice. Petitioner was informed that he would be detained because he is the subject of a final order of removal and there is now a likelihood of removal to Iran. App. p. 3, ¶ 11. Petitioner was also afforded an informal interview to respond to the reasons for revocation. *Id.* To the extent Petitioner contends that he should have received prior notice of the revocation of his release, no regulation or statute requires such prior notice. Thus, ICE has complied with the relevant regulations governing the revocation of release. Moreover, 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). Petitioner’s claims that ICE’s revocation of his release violated regulations fails as ICE properly exercised its ample discretion in revoking Petitioner’s release.

### **III. 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**

On August 17, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag  
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