UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03196-LMP-LIB

Mahamed Abdi Roble,

Petitioner,

v.

Pamela Bondi, Attorney General; Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of U.S. Immigration & Customs Enforcement; Marcos Charles, Acting Executive Associate Director for Enforcement and Removal Operations; Peter Berg, Field Office Director for Enforcement and Removal Operations; U.S. Immigration & Customs Enforcement; U.S. Department of Homeland Security; Ryan Shea, Freeborn County Sheriff,

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM IN OPPOSITION TO EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner Mahamed Abdi Roble filed this petition for a writ of habeas corpus, seeking, among other things, immediate release from custody. The Petition should be denied. Roble was lawfully taken into ICE custody under 8 U.S.C. § 1231 on July 18, 2025, to execute his long-standing final order of removal. His post-final-order detention of *less than four months*, which includes his present detention of one month, is constitutional under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

Petitioner also seeks immediate release based on purported violations of 8 C.F.R. § 241.13(i), the regulations that govern revocation of immigration Orders of Supervision. But the government has complied with these regulations, including by serving Petitioner with a Notice of Revocation of Release, and by conducting an informal interview where he was afforded the opportunity to respond and provide evidence demonstrating that his

removal in the reasonably foreseeable future was unlikely. Petitioner could not meet that burden—then or now—as his detention remains "presumptively reasonable" under *Zadvydas*. *See* 533 U.S. at 701.

Finally, to the extent Petitioner seeks this Court to oversee the process surrounding third country removals, he is a member of the non-opt out class action currently being litigated before the First Circuit Court of Appeals, and any duplicative or potentially conflicting claims lodged by Roble here should be dismissed.

In sum, the Court should dismiss the Petition and deny Petitioner's request for exceedingly broad relief, including his emergency motion for a temporary restraining order and preliminary injunction.

FACTUAL BACKGROUND

I. Petitioner's Background and Criminal Activity

Roble is a native and citizen of Somalia. Declaration of John Ligon ("Ligon Decl.") ¶ 4; *id.* Ex. A, at 3. On September 1, 1995, Roble entered the United States at New York, New York, as a refugee. Ligon Decl. ¶ 5; *id.* Ex. A, at 3. Thereafter, on January 27, 1997, Roble adjusted his status to that of a lawful permanent resident. Ligon Decl. ¶ 6; *id.* Ex. A, at 3.

Roble has a number of criminal convictions relevant to his immigration removal proceedings. On June 3, 2010, Roble was convicted in Hennepin County, Minnesota, District Court, for the offense of Domestic Abuse—Violate No Contact Order—Misdemeanor, in violation of Minnesota Statutes § 518B.01.22. Ligon Decl. ¶ 8. On June 29, 2010, Roble was convicted in Dakota County, Minnesota, District Court for the

offenses of Terroristic Threats—Reckless Disregard Risk, in violation of Minnesota Statutes § 609.713.1, and of Domestic Assault, in violation of Minnesota Statutes § 609.2242.1. *Id.* at ¶ 9. For these convictions, Roble was sentenced to 46 days in jail. *Id.*

On April 26, 2012, in relation to a separate incident, Roble was convicted in Ramsey County, Minnesota, District Court, again for the offense of Domestic Assault, a felony, in violation of Minnesota Statutes § 609.224.4. *Id.* at ¶ 10. Roble was sentenced to 18 months in prison, stayed for 5 years. *Id.*

II. Petitioner's Immigration Proceedings

On April 18, 2017, ICE ERO St. Paul arrested Roble and served him with a Notice to Appear ("NTA") for removal proceedings before an immigration judge. *Id.* at ¶ 11; *id.* Ex. A. The NTA charged Roble as removable under INA sections 237(a)(2)(A)(ii), for having been convicted of two or more crimes involving moral turpitude, 237(a)(2)(A)(iii), for having been convicted of an aggravated felony, 237(a)(2)(E)(i), for having been convicted of a crime involving domestic violence, and 237(a)(2)(E)(ii), for having violated an order for protection. Ligon Decl. ¶ 11; *id.* Ex. A, at 4.[1]

On May 18, 2018, in a written decision, an IJ ordered Roble removed from the United States to any country other than Somalia, but granted him withholding of removal as it pertains to Somalia. Ligon Decl. ¶ 13; *id.* Ex. C. Specifically, the IJ found that Roble's convictions were not "particularly serious crimes" that would bar him from seeking withholding of removal. Ligon Decl. Ex. C, at 16. The IJ further found that Roble would

[1] On September 12, 2017, ICE filed a Form I-261, Additional Charges of Inadmissibility/Deportability against Roble in immigration court, to further clarify the allegations on the previously issued NTA. Ligon Decl. ¶ 12; *id.* Ex. B.

more likely than not be persecuted by al-Shabaab because of his imputed political opinion, and that the Somali government would be unwilling or unable to protect him. *Id.* at 22, 24. Finally, the IJ found that Roble could not internally relocate within Somalia and granted him withholding of removal under INA § 241(b)(3). *Id.* at 26. Because the IJ granted withholding of removal under § 241(b)(3), it did not reach Roble's alternative request for relief under the Convention Against Torture ("CAT"). *Id.* at 26.

DHS appealed the IJ's decision to the Board of Immigration Appeals ("BIA"). Ligon Decl. ¶ 14. On November 15, 2018, the BIA sustained the DHS appeal and remanded Roble's case back to the IJ for further proceedings consistent with the order. *Id.* at ¶ 15; *id.* Ex. D. Specifically, the BIA held that Roble's 2012 conviction for domestic assault was a conviction for a "particularly serious crime" for the purposes of INA § 241(b)(3)(B)(ii), and that Roble was therefore statutorily ineligible for withholding of removal under the Act. *Id.* Ex. D, at 7. The BIA remanded the record to the IJ for a determination as to whether Roble was entitled to deferral of removal under the CAT. *Id.* at 8.

On January 10, 2019, the IJ issued a decision on remand, and denied Roble's application for deferral of removal under Article 3 of the CAT. Ligon Decl. ¶ 16; *id.* Ex. E, at 3. Specifically, the IJ found that Roble had not met his burden to show that the government of Somalia would inflict torture or *acquiesce* to torture by al-Shabaab, IS-Somalia, or other Islamist extremist groups that Roble fears would potentially torture him. Ligon Decl. Ex. E, at 4, 6. The IJ noted that the standard for deferral of removal under the CAT is more stringent than the "unwilling or unable" standard used for purposes of

withholding of removal. *Id.* at 4. Accordingly, the IJ denied Roble's application for deferral of removal under the CAT, and ordered Roble removed to Somalia. *Id.* at 6.

On February 11, 2019, Roble appealed the IJ's decision to the BIA. Ligon Decl. ¶ 17. On July 10, 2019, the BIA sustained Roble's appeal and found him eligible for deferral of removal to Somalia under the CAT. Ligon Decl. ¶ 19; *id.* Ex. F. The BIA remanded the record to the IJ for the purpose of allowing DHS to complete required security checks, for further proceedings, if necessary, and for the entry of a new order. *Id.* Ex. F, at 5. On July 22, 2019, the IJ ordered Roble removed, but, consistent with the BIA opinion, granted deferral under the CAT as it pertains to Somalia. Ligon Decl. ¶ 20; *id.* Ex. G. All parties waived appeal and the IJ's order became administratively final on this date. *Id. See* 8 C.F.R. § 1241.1.

Roble's initial 90-day post-final order custody removal period began on July 23, 2019. Ligon Decl. ¶ 20; *id.* Ex. G. On October 21, 2019, ERO St. Paul conducted a 90-day post-order custody review of Roble's case, and on the same day, released him from ICE custody under an order of supervision. Ligon Decl. ¶ 21; *id.* Ex. H.

III. Petitioner's Present Immigration Detention

On July 18, 2025, ERO St. Paul arrested Roble in Eden Prairie, Minnesota. Ligon Decl. ¶ 22. On the same date, ERO St. Paul issued Roble a Notice of Revocation of Release, informing him that due to changed circumstances he was being brought back into ICE custody. *Id.* at ¶ 23; *id.* Ex. J. On the same date, ERO St. Paul ICE conducted an informal interview of Roble to afford him an opportunity to respond to the reasons for revocation of his order of supervision, and Roble provided a written statement. Ligon Decl. ¶ 24; *id.* Ex.

K. On August 11, 2025, ERO St. Paul requested third country removal assistance from ERO HQ. Ligon Decl. ¶ 25. The Notice of Revocation of Release provides that Roble will receive another custody review on approximately October 18, 2025—three months after the July 18, 2025, notice. Ligon Decl. Ex. J.

IV. *D.V.D.* Nationwide Non-Opt Out Class Action

In March 2025, three plaintiffs instituted the *D.V.D.* case in the District of Massachusetts, a putative class action suit challenging their third country removals. *D.V.D. v. DHS*, No. 25-10676-BEM (D. Mass.). On March 28, 2025, that Court entered a Temporary Restraining Order (ECF No. 34) 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 *D.V.D.* Court issued an order (ECF No. 64) granting the Plaintiff's motion for class certification (ECF. No. 4) and motion for preliminary injunction (ECF No. 6). That Preliminary Injunction was national in effect, certified a non-opt out class, and established certain procedures that DHS was required to follow before removing an alien with a final order of removal to a third country. Relevant to this case, 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.

Order at 23, *D.V.D.* (ECF No. 64).

On May 21, 2025, the *D.V.D.* Court issued a Memorandum on Preliminary Injunction (ECF No. 118) offering the following summary and clarification of its Preliminary Injunction:

> All removals to third countries, *i.e.*, removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, *see* 8 U.S.C. § 1231(b)(1)(C), must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand. Dkt. 64 at 46-47. Following notice, the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for [Convention Against Torture] protection prior to removal. *See id.* If the non-citizen demonstrates "reasonable fear" of removal to the third country, Defendants must move to reopen the non-citizen's immigration proceedings. *Id.* If the non-citizen is not found to have demonstrated a "reasonable fear" of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

The *D.V.D.* Court indicated that the Order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.*

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts's preliminary injunction pending appeal in the United States First Circuit Court of Appeals. *DHS v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). The United States filed its opening brief in the First Circuit on July 10, 2025. *D.V.D.., et al. v. DHS*, No. 25-1393 (1st Cir.).

V. Procedural History of this Matter

Petitioner filed this Petition on August 11, 2025. *See* ECF No. 1. Roble seeks sixteen separate remedies, including immediate release from custody, an order enjoining

Respondents from redetaining Roble for more than seven days to effectuate his removal, and classwide relief to a class of non-citizens residing in Minnesota. *Id.* at Prayer for Relief ¶¶ 1-16. Petitioner also filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction, seeking much of the same relief on an interim basis. *See* ECF No. 2. On August 11, 2025, the Court ordered Respondents to respond to the Petition by August 18, 2025. ECF No. 6.

ARGUMENT

I. Jurisdiction, Burden of Proof, And Scope of Review

28 U.S.C. § 2241 provides district courts with jurisdiction to hear petitions for writs of habeas corpus. When doing so, the burden is on the petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States in order to warrant relief. *See Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011).

Judicial review of immigration matters, including immigration detention, is limited. *I.N.S. v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999); *see also Hampton v. Mow Sun Wong*, 426 U.S. 88, 101 n.21 (1976) ("[T]he power over aliens is of a political character and therefore subject only to narrow judicial review."). The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation," and "repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

For aliens challenging their civil immigration detention in a habeas action, courts employ a narrow standard of review and exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions." *Mathews v. Diaz*, 426 U.S. 67, 81-82

(1976)). The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport, and because public safety is at stake. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Here, Petitioner's sole challenge is to his present immigration detention pending removal. Petitioner does not challenge his final order of removal, nor could he. Jurisdiction over a challenge to such an order lies exclusively with the appropriate circuit court of appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (exclusive jurisdiction to review final orders of removal lies with the circuit court).

II. Legal and Statutory Authority for Detention

For more than a century, the immigration laws have authorized immigration officials to charge noncitizens as removable from the country, arrest noncitizens subject to removal, and detain noncitizens during removal proceedings. *See Abel v. United States*, 362 U.S. 217, 232–37 (1960). Through the Immigration and Nationality Act ("INA"), Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and

in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231.

Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). However, once an alien is subject to an administratively final removal order, as Petitioner is here, detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. pt. 241. Once ordered removed, an alien lacks a legal right to remain in the United States and, as the governing legal rules reflect, his or her liberty interest is reduced. Under Section 1231, "when an alien is ordered removed," the Secretary of Homeland Security "shall detain the alien" "[d]uring the removal period." 8 U.S.C. § 1231(a)(1)(A), (a)(2).[2] The "removal period" is the period during which the U.S. Department of Homeland Security ("DHS") begins to take steps to execute the non-citizen's final removal order. *See Id.* § 1231(a)(1)(A)-(B). That period begins on the latest of three dates: (i) the "date the order of removal becomes administratively final"; (ii) "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order"; or (iii) "[i]f the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement." *Id.* § 1231(a)(1)(B)(i)-(iii).

Although Section 1231 initially provides a 90-day period for the government to execute a final removal order, that period may be extended in some circumstances. For example, aliens removable as convicted of an aggravated felony pursuant to section 8

[2] Although § 1231 and other provisions of the Immigration and Nationality Act refer to the "Attorney General," under the Homeland Security Act of 2002 many of those references are now read to mean the Secretary of Homeland Security. *See Straker v. Jones*, 986 F. Supp. 2d 345, 351 (S.D.N.Y. 2013).

U.S.C. § 1227(a)(2), and those determined to be "a risk to the community or unlikely to comply with the order of removal, may be detained beyond the removal period." *Id.* § 1231(a)(6); *see also id.* § 1231(a)(1)(C) (suspension of period in certain circumstances). DHS also conducts periodic post-order custody reviews to determine whether an alien subject to a final removal order should continue to be detained beyond the initial removal period. *See* 8 C.F.R. § 241.4 (addressing continued detention for inadmissible, criminal, and other aliens). An alien held beyond the removal period may seek release from DHS custody, by showing that "there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." 8 C.F.R. § 241.13(a).

After the expiration of the removal period an alien may be released by DHS under an order of supervision. *See* 8 C.F.R. § 241.13. However, DHS may also revoke release in certain circumstances, including for removal. 8 C.F.R. § 1231.13(i)(2) (DHS "may revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the [DHS] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."). Procedures for revocation are governed by the following section, 8 C.F.R § 1231.13(i)(3), and require that the alien:

> be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). Where, as here, an alien is not released following the informal interview, the provisions of Section 241.4 govern continued detention pending removal. *Id.* § (i)(2).

III. Petitioner's *Zadvydas* Claim is Premature and Should Be Dismissed.

Petitioner's primary argument, that his present detention under 8 U.S.C. § 1231 to effectuate his removal is unlawful under the due process standards set forth in *Zadvydas v. Davis*, *see* ECF No. 1, at ¶¶ 81-91, 111-114, is incorrect, as his detention remains "presumptively reasonable" and constitutional under that binding precedent. 533 U.S. at 701.

Under the Supreme Court's decision in *Zadvydas*, a person subject to a final order of removal cannot, consistent with the Due Process Clause, be detained *indefinitely* pending removal. *Id.* at 699-700. The Supreme Court has held that an alien subject to a final removal order may file a habeas petition and seek release if he can show that his detention has become prolonged and there is "no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. For individuals detained beyond the initial 90-day removal period, the Supreme Court established a temporal marker: post-final order of removal detentions of six months or less are *presumptively* constitutional. 533 U.S. at 701. Detention lasting longer than six months still comports with due process if a "significant likelihood of removal in the reasonably foreseeable future" exists. *Id.* However, as the Supreme Court explained, only:

> After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing. And for detention to remain reasonable, as the period of prior post-

> removal confinement grows, what counts as the "reasonably foreseeable future" conversely would have to shrink. This 6-month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Id.; *see also Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

Here, it is well before the six-month marker set forth by *Zadvydas*. Indeed, even if this Court were to combine Roble's earlier period in post-final order detention (between July 23, 2019 and October 21, 2019), with his current detention period (between July 18, 2025, and when the Petition was filed on August 11, 2025),[3] such detention amounts to fewer than four months. *See* Ligon Decl. ¶¶ 20-22, 25. As of the filing of the Petition, Petitioner had spent a total of 114 days in post-final order detention—well under the six months that is presumptively reasonable under *Zadvydas*. 533 U.S. at 701.

As one court in this district observed, "Determining whether ongoing detention beyond the six-month period established by *Zadvydas* amounts to a constitutional violation

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[3] Several courts have rejected this framework of combining multiple periods of detention, holding that revocation restarts a new six-month period under *Zadvydas*, even if the original six-month period had expired with regard to the first detention. *See Ghamelian v. Baker*, No. CV SAG-25-02106, 2025 WL 2049981, at *4 (D. Md. July 22, 2025) ("Petitioner's due process argument is premature. The government is entitled to its six-month presumptive period before Petitioner's continued § 1231(a)(6) detention poses a constitutional issue"). *See also Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, at *8 (S.D. Fla. Aug. 8, 2025) ("Petitioner argues that his detention should be counted in the aggregate based upon his prior detentions. However, if the Court counted detentions in the aggregate, any subsequent period of detention, even one day, would raise constitutional concerns. And adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals."). *Meskini v. Att'y Gen. of United States*, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (holding that *Zadvydas* is not a "Get Out of Jail Free Card that may be redeemed at any time just because an alien was detained too long in the past").

is fact-intensive and often difficult. *The same is not true of claims brought prior to the six-month period established by* Zadvydas *having elapsed.*" *Brian B. v. Tollefson*, No. 24-cv-2884 (NEB/ECW), 2024 WL 4029657, at *1 (D. Minn. July 26, 2024) (emphasis added), *report and recommendation adopted*, 2024 WL 4026259 (Sept. 3, 2024). Instead, "[a] habeas petitioner must wait until the presumptively reasonable six-month detention period has passed before bringing a habeas petition challenging that detention." *Id. (citing, e.g., Bah v. Cangemi,* 548 F.3d 680, 684 (8th Cir. 2008); *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. 12-cv-0902, 2012 WL 6878901, at *2 (D. Minn. Dec. 7, 2012).

In an attempt to avoid this inescapable conclusion, Petitioner argues instead that his removal order *actually* became administratively final years before—on June 19, 2018 (thirty days after the initial IJ order that ordered him removed and granted withholding of removal as it pertains to Somalia). *See* ECF No. 1, at ¶ 3. That argument is contradicted by both the applicable regulation regarding administrative finality of orders, 8 C.F.R. § 1241.1, and Petitioner's arguments to this Court in his first habeas petition. First, 8 C.F.R. § 1241.1 provides that "[a]n order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall be come final," *inter alia*, "(a) [u]pon dismissal of an appeal by the Board of Immigration Appeals; (b) [u]pon waiver of appeal by the respondent; (c) [u]pon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time." Petitioner seems to argue that *some* embedded portion of the immigration judge's order (*i.e.*, that Petitioner was removable) became final before other portions of the IJ and BIA's orders (concerning withholding and,

later, deferral under CAT) became final.

That proposed reading—bifurcating a single IJ order into multiple sub-orders—contradicts the language of § 1241.1, which speaks of a singular order "made by the immigration judge." It also belies what occurred here administratively—the immigration proceedings included three orders from the IJ, and two orders from the BIA. Under Petitioner's proposed reading, his removal order became final after the first IJ order, despite years of subsequent appeals. Moreover, the last administrative step was on July 22, 2019, when the IJ ordered Roble removed but granted deferral to Somalia under the CAT. Ligon Decl. Ex. G. Were the removal order already administratively final, there would have been no reason for the IJ to order Roble removed in this order.

But perhaps most fundamentally, it contradicts what Petitioner told this Court in his first habeas petition, where he acknowledged he was being detained under 8 U.S.C. § 1226(c) (*pre*-final order detention). *See Roble v. Barr*, No. 19-cv-1505-JNE-KMM, ECF No. 1, at 1 ¶ 1 ("Respondents are unlawfully detaining Petitioner under . . . 8 U.S.C. § 1226(c). Respondents are currently unlawfully subjecting Petitioner to indefinite, prolonged detention, in excess of two years, *without a final order of removal*." (emphasis added)); *id.* ECF No. 9, at 1 ("Petitioner has been detained by the Department of Homeland Security pursuant to 8 U.S.C. § 1226(c) since April 17, 2017.").

This Court should reject Roble's attempt to distort the length of his post-final order detention. Such detention amounts to (at a maximum) four months thus far, which renders this Petition premature under *Zadvydas*. For this reason alone, this Court should dismiss his Petition.

IV. Even Were the Petition Not Premature, Petitioner's Detention Does Not Violate Due Process.

As detailed above, the premature nature of this Petition should end this Court's inquiry. But even had the six-month *Zadvydas* period elapsed, the Petition would still fail to meet Petitioner's initial burden to "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]" *Zadvydas*, 533 U.S. at 701; *Mehighlovesky v. U.S. Dep't of Homeland Sec.*, No. 12-cv-902 (RHK/JJG), 2012 WL 6878901, at *4 (D. Minn. Dec. 7, 2012), *report and recommendation adopted*, 2013 WL 187553 (Jan. 17, 2013). Only once Petitioner successfully makes that showing must the government rebut it. *Zadvydas*, 533 U.S. at 701.

Here, Petitioner cannot meet his burden as the Petition lacks non-conclusory arguments showing that his removal is unlikely in the reasonably foreseeable future. *See* Petition. Petitioner offered no documents or substantive arguments at his informal interview. *See* Ligon Decl. Ex. K. Though Petitioner now asserts in a conclusory manner that ICE has not yet obtained travel documents from a third country, he fails to acknowledge his removal orders expressly authorize removal to *any* country aside from Somalia that will accept him, Ligon Decl. Ex. C, at 27, and that ERO St. Paul is coordinating with ERO headquarters regarding potential third-country removal, Ligon Decl. ¶ 25.

In general, there are five circumstances where courts have found no significant likelihood of removal under *Zadvydas*: "(1) where the detainee is stateless, and no country will accept him; (2) where the detainee's country of origin refuses to issue a travel document; (3) where there is no repatriation agreement between the detainee's native

country and the United States; (4) where political conditions in the country of origin render removal virtually impossible; and (5) where a foreign country's delay in issuing travel documents is so extraordinarily long that the delay itself warrants an inference that the documents will likely never issue." *Ahmed v. Brott*, No. 14-cv-5000 (DSD/BRT), 2015 WL 1542131, at *4 (D. Minn. Mar. 17, 2015), *report and recommendation adopted*, 2015 WL 1542155 (Apr. 7, 2015). Petitioner makes no argument that any of these circumstances are applicable here, *see* ECF No. 1 *passim*, nor could he given the many countries to which his removal was authorized (all but Somalia). *See* Ligon Decl. Ex. C, at 27.

And contrary to Roble's conclusory claims, his detention continues to serve a clear purpose: "assuring [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Detention to facilitate removal has long been held to be a legitimate governmental objective. *See, e.g.*, *Wong Wing*, 163 U.S. at 235 ("Proceedings to exclude or expel would be vain if those accused could not be held . . . while arrangements were being made for their deportation."). Petitioner's detention also has an obvious endpoint at removal. His present detention remains in the presumptively reasonable period under *Zadvydas*, but even had it lasted for longer period, "the mere passage of time . . . is not alone sufficient to show that no such likelihood exists," without more. *See Chen v. Banieke*, No. 15-cv-2188 (DSD/BRT), 2015 WL 4919889, at *4 (D. Minn. Aug. 11, 2015); *Jaiteh v. Gonzales*, No. 07-cv-1727, 2008 WL 2097592 at *2–3 (D. Minn. Apr. 28, 2008). For this additional reason, the Petition should be dismissed.

V. Respondents Fully Complied with the Regulatory Requirements in Revoking Petitioner's Release

Insofar as Petitioner argues that his detention does not comply with the applicable regulations governing revocation of an order of supervision, that argument is incorrect. The relevant regulation provides that "[t]he Service may revoke an alien's release . . . and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). When Respondents do so,

> [u]pon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future . . . . The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

Id. § 241.13(i)(3).

Here, Respondents have complied with these regulations—Roble was provided with a Notice of Revocation of Release on July 18, 2025, as referenced in 8 C.F.R. § 241.13(i)(2) and (3). *See* Ligon Decl. Ex. J. That Notice set forth that "[t]his decision has been made based on a review of your file and/or your personal interview on account of changed circumstances in your case. ICE has determined that there is a significant likelihood of removal in the reasonably foreseeable future in your case." *Id.* On the same day, ICE also conducted the informal interview referenced in § 241.13(i)(2) to provide Roble with an opportunity to respond to the reasons for revocation of his order of supervision. Ligon Decl.

¶ 24; *id.* Ex. K. At that informal interview, Roble provided a written statement to ICE, broadly asking to stay in the United States but not rebutting DHS's position. *See id.* Likewise, the Notice of Revocation of Release also provides that Roble will have an ongoing custody review, to occur approximately three months after the date of the Notice of Revocation of Release (or, approximately October 18, 2025. This process fully comports with the regulatory framework established for revocation, and Petitioner cannot sustain a habeas claim on this front.[4]

VI. The Court Should Dismiss Roble's Claim Challenging the Third Country Removal Process

As part of the relief he seeks in this matter, Roble requests that this Court set forth a process governing any future efforts to remove him to a third country. Specifically, Roble requests that before Respondents deport him to a third country, they provide "a full merits hearing for asylum, withholding of removal, and DCAT before an immigration judge relating to the proposed country of removal with a right to an administrative appeal to the Board of Immigration Appeals." ECF No. 1, at 25 ¶ 13.

Roble, however, is a member of the non-opt out *D.V.D.* certified class, as detailed above. He is an individual subject to a final order of removal who ICE plans to deport to a third country. Because Petitioner is bound as a member of the non-opt out class of the *D.V.D.* nationwide injunction (which the Supreme Court has now stayed), this Court should

[4] Roble also fails to tie his proposed relief—immediate release, prohibition against redetention, permanent injunction against redetaining until a travel document is in hand (and only then, for seven days of redetention), etc.—to any alleged deficiencies in the process surrounding the notification of revocation. In other words, even if this Court were to hold that Respondents' notification or informal interview was deficient, it should not order the broad remedies requested by Petitioner.

dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Dismissal of the portions of Roble's claim that are being litigated in *D.V.D.* is required.

"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." *Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). As the Eighth Circuit Court of Appeals has stated,

> After rendition of a final judgment, a class member is ordinarily bound by the result of a class action . . . . If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.

Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982). Thus, dismissal of this action in light of Petitioner's membership in the *D.V.D.* class is warranted. *See Horns v. Whalen*, 922 F.2d 835 (table), No. 90-6068, 1991 WL 78, at *2, 2 n.2 (4th Cir. Jan. 2, 1991) (holding that the district court was correct to avoid the risk of inconsistent adjudications); *see also McKinney v. Vilsack,* No. 2:21-00212-RWS, ECF No. 40 (E.D. Tex. Aug 30, 2021) (staying case pending resolution of the class action when according to defendants, plaintiff was a member of the two certified classes).

This Court should decline to exercise jurisdiction over Petitioner's Petition also as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim Petitioner is pursuing in the District of Minnesota. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally

recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."). Multiple courts of appeal have held that it is not an abuse of discretion for a district court to decline to exercise jurisdiction over an issue pending in another court, particularly if the other case is a class action. *Goff*, 672 F.2d at 704); *Brown v. Vermillion*, 593 F.2d 321, 322-23 (8th Cir. 1979); *see also Horns*, 1991 WL 78, at *2, 2 n.2 (holding that the district court did not abuse its discretion in declining to decide issue that was subject of class action) (collecting similar district court cases); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (holding that individual suits for injunctive and declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (holding that duplicative suits should be dismissed once a class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (holding that class member should not be permitted to pursue an individual lawsuit seeking equitable relief within subject matter of class action); *Bryan v. Werner*, 516 F.2d 233, 239 (3d Cir. 1975) (finding that the district court did not err in refusing to consider an issue pending in a separate class action).

At the core, Roble challenges how the Respondents should implement his third country removal. This Court should decline to wade into the Petition's claims regarding third country removal that are already being actively litigated before the First Circuit and upon which the Supreme Court has already stayed. 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 the Supreme Court's stay. Moreover, class counsel in *D.V.D.* have already litigated several emergency motions related to the process given to several class members within the class action certified in the District of Massachusetts. Petitioner provides no conceivable reason why his case should proceed in this Court as a member of this non-opt out class. Thus, dismissal of the portion of Roble's claims relating to the procedure around third-country removals is warranted.

VII. Petitioner is not Entitled to Injunctive Relief or a Temporary Restraining Order.

Finally, relying on the same arguments already addressed, the Petitioner seeks a wide variety of injunctive relief. Petitioner seeks (1) immediate release, (2) an injunction prohibiting his transfer out of the District of Minnesota, (3) an injunction prohibiting him from being removed to a third country without a full merits hearing before an IJ, where he may seek relief, and (4) a broad, class-wide[5] injunction barring ICE from detaining a certain defined class of non-citizens in Minnesota. *See* ECF No. 4 (proposed order). None of these remedies sought would maintain the status quo, as preliminary injunctive relief is designed to do.

Moreover, for all of the reasons identified above, Petitioner does not have a likelihood of success on the merits of his habeas petition. Courts evaluating a motion for a TRO or preliminary injunctive relief weigh four factors: (1) the movant's likelihood of success on the merits; (2) the threat of irreparable harm to the movant in the absence of

[5] Petitioner has not sought class certification or purported to file this lawsuit on behalf of similarly-situated individuals.

relief; (3) the balance between that harm and the harm injunctive relief would cause to the other litigants; and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (*en banc*). Success on the merits is the most important factor—indeed, preliminary injunctive relief cannot be entered where a litigant cannot establish any likelihood of success on his claims. *Shrink Missouri Government PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998). Moreover, "[a] TRO is an extraordinary remedy, and the [Petitioner] has the burden of demonstrating that [she] is entitled to such relief." *Minneapolis Urban League, Inc. v. City of Minneapolis*, 650 F. Supp. 303, 305 (D. Minn. 1986).

Here, for the reasons already discussed, Petitioner cannot show any likelihood of success on the merits. But even if he could show a violation of due process rights or of noncompliance with the regulatory framework, he still would not be entitled to the relief he requests. *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748 (D. Mass. Oct. 1, 2018), is instructive. There, a petitioner similarly subject to an immigration order of supervision, received a release notification and was abruptly re-detained. *Id.* at *6-10. As here, the petitioner brought a habeas petition seeking immediate release from custody, based in part on the contention that applicable regulations had not been properly followed. *Id.* at *6-7. As the Court observed, "Doe is not challenging the underlying justification for the removal order (although she seeks to reopen the proceeding). Nor is this a situation where a prompt interview might have led to her immediate release—for example, a case of mistaken identity. There is thus no apparent reason why a violation of the regulation, even assuming it occurred, should result in release." *Id.* at *9-10 (also noting regulations provide for

conducting a custody review within 90 days under 8 C.F.R. § 241.4(k), and "[a]t that time, Doe may present any documentation or other evidence in support of her contention that continued detention is unwarranted."). The same is true here, as there is a fundamental mismatch between the injunctive relief sought and the underlying claims.

Finally, though a lack of likelihood of success on the merits is dispositive, the remaining *Dataphase* factors also do not collectively support relief. In the absence of an injunction and TRO, Petitioner will remain detained but may be removed from the country in compliance with his longstanding removal order. There is a public and governmental interest in the efficient administration of the nation's immigration laws. Thus, as with the first and most important factor, the remaining *Dataphase* factors thus do not weigh in Petitioner's favor and, for these additional reasons, Petitioner's requests for emergency relief should be denied.

CONCLUSION

For all of the forgoing reasons, the Federal Respondents respectfully request that the Petition be dismissed and the relief requested therein be denied.[6]

Dated: August 18, 2025

JOSEPH H. THOMPSON
Acting United States Attorney

/s/ Adam J. Hoskins

BY: ADAM J. HOSKINS
Assistant United States Attorney
Attorney ID Number 393157
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
adam.hoskins@usdoj.gov

[6] The Federal Respondents do not believe an evidentiary hearing is necessary in this matter, as the submissions, including the declaration and exhibits, of the Federal Respondents provide the Court with a sufficient record upon which to adjudicate the Petition.