IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ARISH RUSTAMI, Petitioner, vs. KRISTI NOEM, Secretary of Homeland Security, TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, SAM OLSON, ICE Chicago Field Office Director, PAMELA BONDI, Attorney General, Respondents.	)	Case No. 5:25-cv-03160-JWL

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Arish Rustami ("Petitioner") for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, a noncitizen, alleges that he is being unlawfully detained in FCI Leavenworth in Leavenworth, Kansas, pending removal from the United States. In compliance with the Court's Order to Show Cause, Doc. 3, Pamela Bondi, Attorney General of the United States, Kristi Noem, Secretary of the Department of Homeland Security, Samuel Olson, ICE Chicago Field Office Director, and Todd M. Lyons, Acting Director, U.S. Immigration and Customs Enforcement (collectively "Respondents") respectfully submit this response.

STATEMENT OF FACTS

The following facts are part of the Declaration of Marissa Saenz, a Deportation Officer for Enforcement and Removal Operations at United States Immigration and Customs Enforcement ("ICE"). Exhibit 1, Marissa Saenz Decl., ¶¶ 1-3. Petitioner is a native and citizen of Iran. *Id.* ¶ 5. Petitioner was admitted to the United States at Chicago, Illinois on or about October 27, 2004. *Id.* ¶ 6. On or about April 28, 2010, Petitioner was convicted in the Circuit Court of Jackson County, Missouri for possession of child pornography in violation of Revised Statutes of Missouri § 573.037. *Id.* ¶ 7.

Petitioner was taken into ICE custody on or about August 2, 2010, due to his criminal conviction, which rendered him removable from the United States. *Id.* ¶ 8. On or about August 2, 2010, DHS issued a Notice to Appear charging Petitioner as removable from the United States pursuant to INA § 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii), for having been convicted of an aggravated felony as defined in INA § 101(a)(43)(A) and (I), 8 U.S.C. § 1101(a)(43)(A) and (I), offenses related to sexual abuse of a minor and child pornography. *Id.* ¶ 9. On or about September 28, 2010, Petitioner, with the assistance of counsel, admitted the factual allegations in the Notice to Appear and conceded the charge of removability. *Id.* ¶ 10. Petitioner declined to designate a country of removal and the Immigration Judge directed Iran as the country of removal. *Id.* Petitioner subsequently submitted an application for relief from removal. *Id.* ¶ 11.

On or about March 3, 2011, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. *Id.* ¶ 12. On or about June 30, 2011, Petitioner was released from ICE custody on an order of supervision ("OSUP"). *Id.* ¶ 16.

On June 23, 2025, Petitioner's prior release on OSUP was revoked based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C), and Petitioner was taken into ICE custody. *Id.* ¶ 17. On or about June 27, 2025, Petitioner was served with a copy of the Notice of Revocation of Release. *Id.* ¶ 18; *see also* Exhibit 2, Notice of Revocation of Release. ERO is currently exploring the possibility of removing Petitioner to either Afghanistan or Pakistan. *Id.* ¶ 19.

Petitioner alleges: (1) his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, because his "90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts expired in 2011," (2) his detention violates Due Process because he is not likely to be removed in the reasonably foreseeable future, and (3) his arrest violated Due Process because Respondents failed to comply with 8 C.F.R. § 241.4. Petitioner requests an order (1) enjoining Respondents from removing him to Iran, (2) enjoining Respondents from removing him to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal to that country, and (3) issuing a writ of habeas corpus.

The Court should deny the habeas petition because (1) Petitioner's detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas*, (2) Petitioner's detention does not violate the Due Process Clause, (3) Petitioner's OSUP was properly revoked under 8 C.F.R. § 241.4, and (4) the Court lacks jurisdiction over Plaintiff's request for an order enjoining his removal.

ARGUMENT

"The federal district courts have habeas corpus jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, *6 (D. Kan. July 13, 2020) (citation omitted). To obtain habeas corpus relief, a petitioner must demonstrate that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Under the INA, an alien shall be removed if the alien commits certain deportable offenses, including commission of an aggravated felony. 8 U.S.C. § 1227(a)(2)(A)(iii). Upon the entry of a final removal order, "the Attorney General 'shall detain the alien' during the 90-day removal period established under 8 U.S.C. § 1231(a)(2)." *Zhiriakov*, 2020 WL 3960442, at *8 (citations omitted). "Generally, the government is required to remove the alien held in its custody within the 90-day removal period." *Garcia Uranga v. Barr*, No. 20-3162-JWL, 2020 WL 4334999, *4 (D. Kan. July 27, 2020) (citing 8 U.S.C. § 1231(a)(1)(A)-(B)). Nevertheless, "[i]f removal cannot be carried out within the removal period, inadmissible aliens may be detained beyond the removal period under certain circumstances." *Id.* (citing 8 U.S.C. § 1231(a)(6)).

Specifically, "the detention of an alien subject to a final order of removal for up to six months is presumptively reasonable in view of the time required to accomplish removal." *Zhiriakov*, 2020 WL 3960442, at *8 (citing *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)). "Beyond that period, if the alien shows that there is 'no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.'" *Garcia Uranga*, 2020 WL 4334999, at *4 (quoting *Zadvydas*, 533 U.S. at 701). "The six-month presumption" thus "does not mean that every alien must be released after that time, but rather an alien may be detained 'until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Zhiriakov*, 2020 WL 3960442, at *8 (quoting *Zadvydas*, 533 U.S. at 701).

An alien subject to a final order of removal may be released pursuant to an order of supervision in certain circumstances. 8 C.F.R. §§ 241.4, 241.5. But, an order authorizing release "may be revoked in the exercise of discretion when, in the opinion of the revoking official . . . it is appropriate to enforce a removal order." 8 C.F.R. §§ 241.4(l)(2)(iii).

Here, Petitioner was convicted of an aggravated felony as defined in 8 U.S.C. § 1101(a)(43)(A) and (I), offenses related to sexual abuse of a minor and child pornography, on or about April 28, 2010. Saenz Decl., ¶¶ 7, 9. As such, Petitioner was ordered removed from the United States on or about March 3, 2011. *Id.* ¶ 12. Petitioner was then released from ICE custody on June 30, 2011, after an Immigration Judge granted Petitioner's application for relief from removal to Iran on March 3, 2011. Saenz Decl., ¶¶ 12, 16. On June 23, 2025, Petitioner's prior release on OSUP was revoked based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C). *Id.* ¶ 17.

I. Petitioner's detention does not violate 8 U.S.C. § 1231(a)(6), as interpreted by *Zadvydas.*

Petitioner first asserts that his detention violates 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas v. Davis*, because his "90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts expired in 2011." Pet., Doc. 1, ¶ 42. Courts have agreed, however, that the removal-period clock restarts when an alien subject to a removal order is again detained by ICE. *Liu v. Carter*, No. 25-3036-JWL, 2025 WL 1207089, at *2 (D. Kan. Apr. 25, 2025) (citing *Leybinski v. United States Immigr. and Customs Enforcement,* 2013 WL 132544, at *9 (S.D.N.Y. Jan. 8, 2013), *vacated as moot*, 553 F. App'x 108 (2d Cir. 2014)). As such, Petitioner's removal-period clock restarted when he was detained on June 23, 2025. Petitioner's detention therefore does not violate 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*.

II. Petitioner's detention does not violate the Due Process Clause.

Petitioner next asserts that his detention is pretextual because his arrest was publicized and because Respondents do not have evidence that he can be removed to another country. He therefore asserts that his detention violates the Due Process Clause. Pet. Doc. 1, ¶ 51. Again, however, Petitioner's assertions are without legal support.

As a general matter, aliens ordered removed "may designate one country to which [he or she] wants to be removed," and DHS "shall remove the alien to [that] country." 8 U.S.C. § 1231(b)(2)(A). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien [last] resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005).

Here, Petitioner was detained based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C). Saenz Decl., ¶ 17. Revocation of Petitioner's OSUP for this purpose is explicitly authorized by the INA and its implementing regulations. 8 C.F.R. §§ 241.4(l)(2)(iii), 241.5. As such, Plaintiff's claim that his detention "no longer bears any reasonable relation to a legitimate government purpose" is without merit.

III. Petitioner's OSUP was properly revoked under 8 C.F.R. § 241.4.

Next, Petitioner claims the procedures set forth in 8 C.F.R. § 241.4 were not followed when his OSUP was revoked and he was taken into custody. Petitioner asserts that the "only lawful basis for revoking an order of supervision is when the noncitizen 'violates the conditions of release.'" Pet., Doc. 1, ¶ 56. He further asserts that 8 C.F.R. § 241.4 entitles him to notice of the violation and a hearing. *Id.* at ¶ 57. Section 241.4 does not support these assertions, however.

While § 241.4(l)(1) provides that an alien "may be returned to custody" if he or she "violates the conditions of release," subsection (l)(2) also allows for revocation of an OSUP if the revoking official, in his or her discretion, believes that (1) "[t]he purposes of release have been served;" (2) "[t]he alien violates any condition of release;" (3) "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien;" or (4) "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.*

§ 241.4(l)(2)(i)-(iv). Plaintiff's claim that 8 C.F.R. § 241.4 only authorized ICE to revoke Petitioner's OSUP upon a violation of a condition of his release is therefore without merit.

Additionally, although subsection (l)(1) provides that an "alien will be notified of the reasons for revocation of his or her release" and "afforded 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," it does not provide an entitlement to a formal hearing as Petitioner asserts. *Id.* § 241.4(l)(1). Because Petitioner's OSUP was properly revoked for the purpose of enforcing the removal order against him and because Petitioner was not entitled to a hearing as he suggests, Petitioner's claim for relief based upon a violation of 8 C.F.R. § 241.4 should be denied. Saenz Decl., ¶ 17; 8 C.F.R. § 241.4(l)(2)(iii).

Further, to the extent Petitioner would assert that the alleged failure to conduct an informal interview pursuant to 241.4(l)(1) warrants release, that claim should also be denied. In *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540 (W.D. Wash. Dec. 4, 2018), a habeas petitioner argued he never received the informal interview contemplated in a similar regulation—8 C.F.R. § 241.13(i)(3). *Id.* at *5. The government did not rebut the petitioner's assertion. *Id.* at *5 & n.5. Still, the court could not "discern any actionable injury from this violation of the regulations given that ICE had procured a travel document and scheduled [the petitioner's] removal." *Id.* (citation modified). Thus, the court concluded there was "no apparent reason that ICE's failure to provide an informal interview should result in [the petitioner's] release." *Id.* (citation modified); *see also Nguyen v. Noem*, No. 6:25-CV-00057-H, Doc. 21, at 14 (S.D. Tex. Aug. 10, 2025) ("A violation of Section 241.13(i)(3) alone cannot justify habeas. It is a mere administrative regulation, not required as the result of the Constitution.") (attached as Exhibit 3); *Chavez Barrios v. Ripa*, No. 1:25-cv-22644-GAYLES, 2025 WL 2280485, *8 (S.D. Fla. Aug. 8, 2025) ("Even if Petitioner could establish that Respondents violated their OSUP revocation procedures, the Court finds that

Petitioner's release from detention, or a stay of removal, would not be appropriate."); *Tanha v. Warden*, No. 1:24-cv-02121-JRR, 2025 WL 2062181, *6 (D. Md. July 22, 2025) ("While the court appreciates that the informal interview has not been done (or scheduled, apparently), release from detention is an overreach and not the appropriate cure."); *Doe v. Smith*, No. 18-11363-FDS, 2018 WL 4696748, *9 (D. Mass. Oct. 1, 2018) ("There is thus no apparent reason why a violation of the regulation, even assuming it occurred, should result in release.").[1]

IV. The Court should deny Petitioner's request that his removal be enjoined.

Finally, the Court should deny Petitioner's request that the Court enjoin Respondents from removing him to Iran or to any other country without first providing him notice and offering him adequate opportunity to apply for withholding of removal to that country.

A. The Court lacks jurisdiction over Petitioner's requested relief from removal as it raises a claim under the Convention Against Torture.

The INA provides that "a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of any cause or claim under [Convention Against Torture (CAT)]." 8 U.S.C. § 1252(a)(4). Likewise, the Foreign Affairs Reform and Restricting Act (FARRA) confirms that "no court shall have jurisdiction to review . . . any . . . determination made with respect to the application of [CAT] . . . except as part of the review of a final order of removal." FARRA § 2242(d), 112 Stat. 2681-822; *see* 8 C.F.R. § 208.18(e). FARRA also bars judicial review of the "regulations adopted to implement [CAT],"

[1] Although *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), "stands for the proposition that an agency must adhere to its own rules and regulations when an individual's due process interests are implicated," Plaintiff fails to allege any prejudice as a result of the alleged failure to conduct the informal interview, and, in the Board of Immigration Appeals context, the Tenth Circuit has held that a petitioner "must show he was prejudiced by the actions he claims violated his Fifth Amendment rights." *Barrie v. FAA*, 16 F. App'x 930, 934 (10th Cir. 2001) (discussing *Accardi*); *Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) (discussing prejudice); *see also Novitskiy v. Holder*, 514 F. App'x 724, 727 (10th Cir. 2013) (relying on *Berrum-Garcia* to conclude a lack of prejudice meant "Petitioner has failed to demonstrate a due process violation").

and assigns to the Executive alone the duty to design procedures to "implement the obligations of the United States" under that treaty. FARRA § 2242(d), 112 Stat. 2681-822.

Here, although Petitioner does not explicitly bring a claim under the CAT, Petitioner cites the CAT throughout his Petition and requests injunctive relief relating to his concern that he will be removed without an opportunity to seek protection under the CAT. Pet., Doc. 1, ¶¶ 13-14, 18, 33, 35. Thus, his requested injunctive relief related to his removal concern the "application" of the CAT. The appropriate court of appeals is therefore Petitioner's only avenue for relief relating to his CAT claim and this Court lacks jurisdiction over it. 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822; 8 C.F.R. § 208.18(e).

In addition to the jurisdictional bar relating to CAT claims, Petitioner's requested relief would violate INA provisions that prohibit district courts from exercising jurisdiction over suits challenging actions taken to execute removal orders. Congress has explicitly and unambiguously stripped district courts of jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). To the extent claims arising from these distinct actions are reviewable at all, they are only reviewable along with any other "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien"—in a petition for review of a "final order" of removal in the appropriate court of appeals. 8 U.S.C. § 1252(b)(9). And that petition, again, is the "sole and exclusive means for judicial review" of such claims. 8 U.S.C. § 1252(a)(5).

Together, these provisions strictly limit judicial review over certain "stages in the deportation process." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (*AADC*). One such stage is the execution of a removal order. *Id.* If an alien wishes to challenge that discrete act in court, his sole and exclusive means of doing so is a petition for review; if that means is unavailable, then nothing in the INA "provides for jurisdiction" for the federal courts to intervene. *Id.* at 487; *Mapoy v. Carroll,* 185 F.3d 224, 229-30 (4th Cir. 1999) (holding that Section 1252(g) has "a singular exception to the general rule in § 1252(g) that jurisdiction is stripped from the enumerated claims" and that is for claims "specifically provided by § 1252.").

Once more, that principle precludes this Court from exercising jurisdiction over Petitioner's requested relief. His request for an injunction barring removal to Iran and requiring certain notice before removal arises entirely from actions taken to "execute removal orders," 8 U.S.C. § 1252(g)—namely, to remove him to a third country—and thus "falls squarely within" the INA's jurisdictional bar. *AADC*, 525 U.S. at 487. The district court therefore lacks authority to enjoin Respondents from removing Petitioner to Iran or removing him to a third country without additional process—i.e., from executing his removal order in a particular way.

B. Petitioner seeks injunctive relief rejected by the Supreme Court in *D.V.D. v. U.S. Dep't of Homeland Sec.*

Petitioner's requested injunctive relief should also be denied because the relief Petitioner seeks is the same as the relief requested in *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-10676-BEM, in the District of Massachusetts, a putative class action suit challenging third country removals. On March 28, 2025, the district court entered a Temporary Restraining Order enjoining the 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 were met. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 942948 (D. Mass. Mar. 28, 2025).

On April 18, 2025, the district court issued an order granting the Plaintiff's motion for class certification and motion for preliminary injunction. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025), *opinion clarified,* No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified,* No. CV 25-10676-BEM, 2025 WL 1453640 (D.

Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025). That Order certified a non-opt out class and established certain procedures that DHS must follow before removing an alien with a final order of removal to a third country, which were, until recently, in effect nationwide. 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.

Id.

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts's preliminary injunction pending appeal in the United States Court of Appeals for the First Circuit. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). That same day, the District Court of Massachusetts ordered that its prior order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. 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. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

Here, the Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. *See Manago v. Carter*, No. 25-3183-JWL, 2025 WL 2576755, at *2 (D. Kan. Sept. 5, 2025). Petitioner requests judicial oversight of the implementation of his third country removal. 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 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.

Likewise, the 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. 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.

Allowing Petitioner to seek additional process would be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* The Court should deny Petitioner's requested injunctive relief.

CONCLUSION

For the foregoing reasons, the Court should enter judgment against Petitioner on his § 2241 habeas petition.

Respectfully submitted,

RYAN A. KRIEGSHAUSER
United States Attorney
District of Kansas

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ARISH RUSTAMI

Petitioner,

v. Case No. 25-3160-JWL

KRISTI NOEM, *Secretary, U.S. Department of Homeland Security*;
TODD M. LYONS, *Acting Director, U.S. Immigration and Customs Enforcement*;
SAMUEL OLSON, *Field Office Director, U.S. Immigration and Customs Enforcement*;
and
PAMELA BONDI, *Attorney General,*

Respondents.

DECLARATION OF DEPORTATION OFFICER
MARISSA SAENZ

Pursuant to the provisions of 28 U.S.C. § 1746, I, Marissa Saenz, Deportation Officer ("DO") for Enforcement and Removal Operations ("ERO"), Immigration and Customs Enforcement ("ICE"), of the Department of Homeland Security ("DHS"), hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information, and belief:

1. I am competent in all respects to testify to the matters contained in this declaration, and I make this declaration in my official capacity. The statements contained in this declaration are based upon my personal knowledge of the immigration case regarding Arish Rustami ("Petitioner"), my review of available electronic databases and records kept by DHS in the ordinary course of business, and/or information provided to me by other DHS employees in the course of my official duties.

EXHIBIT
1

2. I make this declaration in support of the Respondents' initial response to the Petition for Writ of Habeas Corpus filed by Petitioner, and to place before the Court information relevant to this matter.

3. I have been a Deportation Officer with ERO Chicago, Illinois—Kansas City, Missouri sub-office since November 6, 2022. Previously, I was a Border Patrol Agent with U.S. Customs and Border Protection in Laredo, Texas, for approximately 9 years.

4. As a Deportation Officer, my duties include: (1) arresting aliens who are removable from the United States, (2) processing aliens who will be removed from the United States or placed into removal proceedings before an Immigration Judge, (3) monitoring aliens' cases until removal, (4) responding to aliens' requests while in ICE custody, and (5) requesting travel documents and coordinating travel for aliens ordered removed from the United States. My duties may, at times, include other responsibilities related to the apprehension, arrest, and removal of aliens, as needed.

5. Petitioner is a native and citizen of Iran.

6. Petitioner was admitted to the United States at Chicago, Illinois on or about October 27, 2004.

7. On or about April 28, 2010, Petitioner was convicted in the Circuit Court of Jackson County, Missouri for possession of child pornography in violation of Revised Statutes of Missouri § 573.037.

Immigration Proceedings

8. Petitioner was taken into ICE custody on or about August 2, 2010 due to his criminal conviction, which rendered him removable from the United States.

9. On or about August 2, 2010, DHS issued a Notice to Appear charging Petitioner as removable from the United States pursuant to INA § 237(a)(2)(A)(iii); 8 U.S.C. §

1227(a)(2)(A)(iii), for having been convicted of an aggravated felony as defined in INA § 101(a)(43)(A) and (I), 8 U.S.C. § 1101(a)(43)(A) and (I), offenses related to sexual abuse of a minor and child pornography.

10. On or about September 28, 2010, Petitioner, with the assistance of counsel, admitted the factual allegations in the Notice to Appear and conceded the charge of removability. Petitioner declined to designate a country of removal. The Immigration Judge directed Iran as the country of removal.

11. Petitioner subsequently submitted an application for relief from removal.

12. On or about March 3, 2011, Petitioner was ordered removed from the United States, but the Immigration Judge granted his application for relief. Appellate rights were reserved, and any appeal of the Immigration Judge's decision was due to the Board of Immigration Appeals ("BIA") within 30 calendar days. No appeal was taken of the Immigration Judge's decision by either party, making the order final upon the lapse of the appeal period.

Post Removal Order

13. Pursuant to 8 C.F.R. § 1241.1(a), an order of removal made by the Immigration Judge at the conclusion of proceedings shall become final upon dismissal of an appeal by BIA.

14. Since no appeal was filed with BIA, the Immigration Judge's order is a final administrative order pursuant to 8 C.F.R. § 1241.1.

15. Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien who has been ordered removed, shall be removed from the United States within 90 days. At or near 90 days post removal order, if an alien has not been removed, a Post-Order Custody Review ("POCR") is conducted to determine the necessity of continued custody.

16. On or about June 30, 2011, Petitioner was released from ICE custody on an order of supervision ("OSUP").

17. On June 23, 2025, Petitioner's prior release on OSUP was revoked based on changed circumstances and to enforce the existing removal order by attempting to remove Petitioner to a third country pursuant to 8 U.S.C. § 1231(b)(1)(C), and Petitioner was taken into ICE custody.

18. On or about June 27, 2025, Petitioner was served with a copy of the Notice of Revocation of Release.

19. ERO is currently exploring the possibility of removing Petitioner to either Afghanistan or Pakistan.

20. ICE will continue its efforts to effectuate Petitioner's removal and will update the Court on any further developments in this matter.

I declare under penalty of perjury that the foregoing is true and correct.

MARISSA SAENZ Digitally signed by MARISSA SAENZ Date: 2025.09.11 14:17:41 -05'00'

Executed on: 09/11/2025
(date)

Marissa Saenz
Deportation Officer