UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

JABA PATARIA,	)	**CIVIL ACTION NO: 25-cv-1188**
	)	
VERSUS	)	**JUDGE DRELL**
	)	
KRISTI NOEM, *et al*	)	**MAGISTRATE JUDGE PEREZ-MONTES**
	)	

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

On behalf of Respondents, Kristi Noem, Pamela Bondi, Todd Lyons, Brian S. Acuna, and Eleazar Garcia

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INTRODUCTION

The Petitioner is an inadmissible alien from Georgia and Russia, who was arrested at the United States/Mexico border and is now subject to a final order a removal. He seeks release from ICE detention because (1) his detention has lasted over six months following his final order of removal, (2) he anticipates potential deportation to a third country absent notice and opportunity to be heard, and (3) his detention violates the Administrative Procedures Act. None of these arguments have merit, and the Petition should be dismissed.

STATEMENT OF FACTS

Mr. Pataraia was born in Georgia and is a citizen of Russia and Georgia. He alleged that he was persecuted by agents in Georgia because he was involved with the United National Movement, which opposes the ruling Georgian Dream party, and was persecuted in both Georgia and Russia because he opposed the Russian invasion of Ukraine. He states that he suffers from a severe spinal injury and PTSD.

In her September 23, 2024 order, the Immigration Judge found that Mr. Pataraia was inadmissible under sections 212(a)(6)(A)(i) and (a)(7)(A)(i)(I) of the Immigration and Naturalization Act ("INA"). Asylum was denied because Mr. Pataraia entered the United States illegally at the U.S./Mexico border rather than a port of entry. Mr. Pataraia was ordered to be removed to Georgia and alternatively Russia, however, the order withheld removal to Georgia and Russia pursuant to INA § 241(b)(3). The Board of Immigration Appeals ("BIA") affirmed the withholding of

removal to Georgia and Russia and dismissed the appeal on February 6, 2025. No appeals were taken from the BIA's ruling.[1]

Efforts to remove Mr. Pataraia to three potential third countries, Armenia, Azerbaijan or Kazakhstan, were initiated quickly, with multiple follow-up inquiries, and the efforts are ongoing. Within a week of the BIA's ruling, on or about February 13, 2025, DHS Enforcement and Removal Operations ("ERO") personnel submitted requests to the countries of Armenia, Kazakhstan, and Azerbaijan for Mr. Pataraia's entry to those countries upon removal from the United States. (Exhibit A, Declaration of Justin Williams, Acting Assistant Field Office Director, para. 5). When responses were not received, ERO re-submitted the requests on April 3, 2025 and again on April 25, 2025. (Exh. A, para. 5). The Kazakhstan Embassy communicated with ERO on May 14, 2025 acknowledging that the United States' request was submitted to the relevant authorities, and the Embassy would notify ERO once a decision has been made. (Exh. A, para. 6). Moreover, on or about August 20, ERO New Orleans sought assistance from ERO Headquarters for this third country removal. (Exh. A, para. 7). The United States has not yet received responses from the three countries. (Exh. A, para. 8).

[1] The Petition contains several paragraphs of information regarding relief pursuant to the Convention Against Torture ("CAT relief"). However, Mr. Pataraia was not granted any CAT relief, and the allegations specific to CAT relief are not relevant.

LEGAL FRAMEWORK

I. Petitioner's Detention is Lawful and Constitutional

A. This Court has jurisdiction to consider challenges to detention.

District courts have jurisdiction over petitions for writs of habeas corpus filed under 28 U.S.C. § 2241 claiming indefinite government confinement. See 28 U.S.C. § 2241(a). Petitioner, who is detained at the Winn Correctional Center in Winnfield, Louisiana, is in the government's custody within the confines of the Western District of Louisiana, and therefore, is within the jurisdiction and venue of this Court.

B. Petitioner has failed to meet his burden of proving he has good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.

An alien's post-removal-period detention under 8 U.S.C. § 1231 is limited to a period reasonably necessary to bring about that alien's removal from the United States. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has found that once the removal period begins, six months is a reasonably necessary period to remove the alien. *See id.* at 701. After six months, 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. *Id.*

The Supreme Court made it clear that the lapse of the presumptive period alone does not require release and concluded that, "[t]o 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." *Zadvydas*, 533 U.S. at

701. The United States Court of Appeals for the Fifth Circuit has recognized that "[t]he [Supreme] Court's decision creates no specific limits on detention, however, 'as 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'." *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701); *see also*, *Agyei–Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011).

"The burden is on the alien to show that there is no reasonable likelihood of repatriation." *Agyei-Kodie v. Holder*, 418 F. App'x 317, 318 (5th Cir. 2011); *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006) ("The alien bears the initial burden of proof in showing that no such likelihood of removal exists."). An alien's claim must be supported by more than mere "speculation and conjecture." *Idowu v. Ridge*, 03-1293, 2003 WL 21805198, *4 (N.D. Tex. Aug. 4, 2003) (citing *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)). Additionally, mere conclusory allegations are insufficient to meet the alien's burden of proof. *Nagib v. Gonzales*, No. 3:06-cv-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-cv-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004). The Northern District of Texas has clarified:

> To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that "the circumstances of his status" or the existence of "particular and individual barriers to his repatriation" to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ; *Ali v. Gomez*, No. SA-11-CA-726-FB, 2012 WL 13136445, *6 (W.D.

Tex. March 14, 2012) (denying habeas relief when petitioner offered only 'conclusory statements' to show he will not immediately be removed to Pakistan). If the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Akinwale*, 287 F.3d at 1051.

The "reasonably foreseeable future" is not a static concept. Instead, it is fluid and country specific, significantly depending on the diplomatic relations between the United States and the country that will receive the removed alien. The processes for obtaining a temporary travel document from another country are complex, multi-faceted, and include considerations of diplomacy that are beyond the control of ICE. The Northern District of Georgia has explained:

> Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back to the hinterlands, simply because his native country is moving slow, would mean that the United States has effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Moreover, even a "lack of visible progress ... does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366. "It simply shows that the bureaucratic gears of the [federal immigration agency] are slowly grinding away." *Khan v. Fasano*, 194 F.Supp.2d 1134, 1137 (S.D. Cal. 2001); *Idowu v. Ridge*, No. 3:03-cv-1293-R, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003).

Petitioner has failed provide this Court sufficient evidence that he has good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. He has offered nothing beyond the fact of his six- month detention and unsupported allegations that efforts to remove him to "Armenia, Azerbaijan, and Kazakhstan have failed." These conclusory and unsupported allegations fall far short of being a good reason to believe his detention will be of indefinite duration. Moreover, Petitioner's allegations that the efforts to remove him have failed is not accurate. Here, the Government has acted swiftly and diligently and is simply waiting for responses from the receiving countries.

This Petition should be dismissed, like the petitions in *Fahim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365 (N.D. Ga. 2002) and *Nagib v. Gonzales,* 2006 WL 1499682 at p. 2. In both cases, courts found that the aliens had not met their burdens because the only evidence of a good reason to believe there was no significant likelihood of a reasonably foreseeable removal was the time in detention and the assertion that receiving country had not yet issued travel documents. In these types of cases, absent evidence of an institutional barrier to removal or an individual barrier to removal, habeas relief is not warranted. *Fahim,* at 1365-1366*; Nagib,* at pp. 2-3. Mere delay does not trigger an inference that the removable alien will not be accepted by a country. *See, Fahim,* at 1366.

The Petitioner cites *Zadvydas* for the proposition that the Government's good faith efforts to remove are insufficient to meet the standard. [Pet. Para. 48]. First, it is Petitioner's burden to first prove that he has good reason to believe there is no

significant likelihood of reasonably foreseeable removal. The burden shifts to the Government only after the Petitioner satisfies his burden.

Second, this representation takes the Court's statement out of context. The Court was actually referring to the entire burden of proof used by the Fifth Circuit below, not the factors courts should consider going forward when determining good reason to believe no significant likelihood of reasonably foreseeable removal. The Court actually stated:

> The Fifth Circuit held Zadvydas' continued detention lawful as long as "good faith efforts to effectuate . . . deportation continue" and Zadvydas failed to show that deportation will prove "impossible". 185 F.3d at 294. But this standard would seem to require an alien seeking release to show the absence of *any* prospect of removal — no matter how unlikely or unforeseeable — which demands more than our reading of the statute can bear.

Zadvydas, at 702. While the Government has proceeded diligently and in good faith to effectuate Petitioner's removal, the key issue in this case is that the Government cannot control the time in which the removal countries make their decision. Delay resulting from their decision making does not satisfy the Petitioner's burden of proof. And, absent evidence of an institutional barrier to removal or an individual barrier to removal, the Petition must be dismissed because the Petitioner has not met his burden of proof.

Further, ERO has complied with regulations that ensure due process is being provided to Mr. Pataraia while he is in detention. When an alien is ordered removed, the DHS must physically remove the alien from the United States within a 90-day removal period. 8 U.S.C. § 1231(a)(1)(A). During the 90-day period, detention is

mandatory. 8 U.S.C. § 1231(a)(2). However, an alien may be detained beyond the removal period if he is inadmissible. 8 U.S.C. § 1231(a)(6).

Following the Supreme Court's decision in *Zadvydas*, the Government enacted regulations to meet the criteria established by the Court to prevent indefinite detention. *See* 8 C.F.R. § 241.4. Pursuant to those regulations, a detained alien is entitled to review of his custody status prior to the expiration of the removal period, 8 C.F.R. § 241.4(k)(1), and at annual intervals thereafter, 8 C.F.R. § 241.4(k)(2), with the right to request interim reviews not more than once every three months in the interim period between annual reviews. 8 C.F.R. § 241.4(k)(2)(iii). The post-order custody review process satisfies the requirements of 8 U.S.C. § 1231(a)(6) and the due process clause. *See Zadvydas*, 533 U.S. at 724. The regulations require that the reviewing ICE officials consider several factors when determining whether to release an alien or continue his detention pending removal from the United States. 8 C.F.R. § 241.4(f).

Exhibit C to the Petition proves that custody status was reviewed on May 14, 2025, and his detention continued because Mr. Pataraia entered the country illegally rendering him inadmissible. [Rec. Doc. 1-4]. Further, on August 21, 2025, he was served with an interview notice for a custody review in accordance with the regulations. Petitioner has provided no evidence to support any contention that he has been denied due process, or that he has requested any review of his custody status and been denied. As a result, his current immigration detention is consistent with due process, as well as with applicable statutes and regulations, as interpreted by the

United States Supreme Court in *Zadvydas*. "If it is established at any stage of a custody review that, in the judgment of the Service, 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).

Mr. Pataraia has not met his burden of demonstrating that his detention under 8 U.S.C. § 1231(a)(6) violates his due process rights under the *Zadvydas v. Davis*, 533 U.S. 678, 701-705 (2001) standard because he has not established that there is good reason to believe that there is no significant likelihood of his removal from the United States in the reasonably foreseeable future. His only factual basis for relief consists of speculative, conclusory, and incorrect allegations. He has failed to satisfy his burden and his Petition should be dismissed.

II. Theoretical Fear-Based Claims for Deportation to a Third Country Should not be addressed.

Since the Petitioner cannot be removed to his home country of Georgia or to Russia, he must be removed to a third country. 8 U.S.C. §1231(b)(E)(vii). The Petitioner makes a theoretical argument that he may be deported without notice and the opportunity to make fear-based claims regarding his removal. Petitioner is obviously on notice that removal to Armenia, Azerbaijan or Kazakhstan is being sought. [Rec. Doc. 1, paras. 1, 4, 78]. Moreover, the Petition contains no fear-based claims related to any of these countries. Instead, Petitioner simply argues that a future deportation to a third country pursuant to the Noem March 30, 2025 memo violates his Constitutional due process rights relying on the District Court ruling in *D.V.D. et al. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025), which enjoined removals

pursuant to the memo. The Supreme Court, however, has stayed the injunction. *DHS v. D.V.D.*, 606 U.S. ___, 145 S.Ct. 2153 (2025).

Furthermore, the argument should be rejected because the Court lacks jurisdiction to hear this claim. Alternatively, the Court should decline to address the issue since Petitioner is a member of the *D.V.D.* class.

A. The Court Lacks Jurisdiction.

1. 8 U.S.C. § 1252(g) Bars Review of Challenges to the Execution of Removal Orders

Since Petitioner challenges the execution of his removal order, this Court lacks jurisdiction under 8 U.S.C. § 1252(g).[2] Section 1252(g), as amended by the REAL ID Act, bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." *Id.* In enacting § 1252(g), Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525

[2] The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *see also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). As relevant here, Congress divested district courts of jurisdiction to review challenges relating to removal proceedings and instead vested only the courts of appeals with jurisdiction over such claims.

U.S. 471, 482 (1999). *See also Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order," even "indirectly," is "jurisdictionally barred").

In *AADC*, the Supreme Court considered the reach of § 1252(g), explaining that with respect to the "three discrete actions" identified in the text of § 1252(g)—commencement of proceedings, adjudication of cases, and execution of removal orders—§ 1252(g) strips district courts of jurisdiction. *AADC*, 525 U.S. at 482. Those actions are committed to the discretion of the Executive Branch, and § 1252(g) was designed to protect that discretion and to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *AADC*, 525 U.S. at 487. Thus, by its plain terms, § 1252(g) bars Petitioner's claims. *AADC*, 525 U.S. at 487; *accord Silva v. United States*, 866 F.3d 938, 940-41 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Because Petitioner's challenge is to the execution of a final removal order, i.e., detention pending his removal to Armenia, Azerbaijan or Kazakhstan, this action is barred by the plain terms of § 1252(g). Accordingly, this Court lacks jurisdiction.

2. 8 U.S.C. §§ 1252(a)(5) and (b)(9) Channel All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals

Even if § 1252(g) of the INA did not bar review, §§ 1252(a)(5) and 1252(b)(9) of

the INA bar review in *this* Court. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). This explicitly excludes "section 2241 of title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. § 1252(b)(9). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all* [claims arising from deportation proceedings]" to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. "Taken together, §[§] 1252(a)(5) and [(b)(9)] mean that *any* issue— whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and- practices challenges . . . whenever they 'arise from' removal proceedings").

Here, Petitioner's theoretical argument that he might have fear based claim to removal to a third country arguably amounts to an impermissible challenge to his final removal order, over which this Court lacks jurisdiction. Accordingly, this Court lacks jurisdiction under §§ 1252(a)(5) and (b)(9).

B. This Court should dismiss or, alternatively, stay proceedings pending the resolution of an already-certified nationwide class action.

Alternatively, notwithstanding the jurisdictional bars outlined above, this Court should dismiss, or, at the very least, stay this action pending resolution of class action currently pending in the United States District Court for the District of Massachusetts, *see D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.), in which Petitioner is a class member. "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 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 *DVD* class is warranted.

Alternatively, this Court should stay proceedings pending the outcome of *DVD*. District courts also have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 11410411, at *2 (M.D. Ga. 2016) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982) (citing *Landis v. North American Co.*, 299 U.S. 248, 255 (1936), *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 665 (1978), and *P.P.G. Industries Inc. v. Continental Oil Co.*, 478 F.2d 674 (5th

Cir. 1973)). "A stay is also necessary to avoid the inefficiency of duplication, the embarrassment of conflicting rulings, and the confusion of piecemeal resolutions where comprehensive results are required." *Chappell*, 2016 WL 11410411, at *3 (internal quotations and citations omitted).

Here, the potential for conflicting decisions is real. Taking the instant Petition at face value, it appears that Petitioner is a member of the nationwide class certified by the United States District Court for the District of Massachusetts on April 18, 2025. *D.V.D.*, 778 F. Supp. 3d at 379. That class is defined as

> [a]ll 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) whom 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. In *D.V.D.,* Plaintiffs, on behalf of themselves and this certified class, seek to require DHS to provide additional procedures to class members before removing them to a third country (*i.e.* a country not previously designated in removal proceedings). The Court certified the class.[3] *Id.* at 386 ("the Court finds that the named and unnamed Plaintiffs alike share an identical interest in challenging Defendants' alleged practice of removing individuals to third countries without notice and an opportunity to be heard, and, as such, satisfy the typicality requirement under Rule 23(a)(2)."); *see also Kincade v. Gen. Tire and Rubber Co.*, 635 F.2d 501, 506-07 (5th

[3] The Government has appealed the district court's preliminary injunction. *D.V.D., et al. v. U.S. Dep't of Homeland Sec., No. 25-1311 (1st Cir.).*

Cir. 1981) (discussing the lack of an opt out under Rule 23(b)(2)). Membership in the class is not waivable. Fed. R. Civ. P. 23(b)(2).

Because the District Court for the District of Massachusetts has certified a class that will address Petitioner's claims, staying these proceedings would be prudent as a matter of comity. *Cf Munaf v. Geren*, 553 U.S. 674 at 693 (2008) ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"). As another district court has recognized, Rule 23(b)(1) permits a class action to proceed where "prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." *Nio v. United States Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (quoting Fed. R. Civ. P. 23(b)(1)). Indeed, this is the very purpose of a Rule 23(b)(2) class. Because "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Nio*, 323 F.R.D. at 34. There is little sense to go forward in this case because the analysis is already well under way and currently being evaluated to some degree by the First Circuit Court of Appeals. *D.V.D., et al. v. U.S. Dep't of Homeland Sec.,* No. 25-1311 (1st Cir.). "Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure." *Cicero v. Olgiati*, 410 F. Supp 1080, 1099 (S.D. NY 1976). 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.

III. No jurisdiction over APA claim.

Petitioner argues that DHS violated the Administrative Procedures Act by failing to follow its own procedures as required by the *Accardi* doctrine. This argument fails based on the jurisdictional requirements under the APA.

A final agency action is required for APA review. 5 U.S.C. § 706. An action is "final" when it (1) "mark[s] the consummation of the agency's decision-making process," and (2) is one "from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citation omitted). "Final agency action 'is a term of art that does not include all [agency] conduct such as, for example, constructing a building, operating a program, or performing a contract,' but instead refers to an 'agency's [final] determination of rights and obligations whether by rule, order, license, sanction, relief, or similar action.'" *Nat'l Veterans Legal Servs. Program v. United States DOD*, 990 F.3d 834, 839 (4th Cir. 2021) *quoting Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 193 (4th Cir. 2013) (*citing Bennett*, 520 U.S. at 177-78). A challenged action fails the first prong if it is "of a merely tentative or interlocutory nature" and does not express an agency's "unequivocal position." *Holistic Candlers and Consumer's Ass'n v. FDA*, 664 F.3d 940, 943 (D.C. Cir. 2012) (citations omitted). A non-final action contemplates further administrative consideration or modification prior to the agency's adjudication of rights or imposition of obligations. *See id.* at 945.

Petitioner challenges his detention by ICE, which is not a final agency action that is reviewable by this Court under the APA. Instead, the challenge is squarely barred by 8 U.S.C. § 1252(g)—as the Supreme Court held in a remarkably similar case. In § 1252(g), Congress clearly provided that "no court" has jurisdiction over any cause or claim "arising from the decision or action ... to commence proceedings, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and APA) of claims arising from a decision or action to commence removal proceedings. *See Reno v. AADC*, 525 U.S. 471, 482 (1999). In short, the decision as to the method by which removal proceedings are commenced, which is the genesis of Petitioner's detention, is a discretionary one that is not reviewable by a district court under §1252(g). *See id.* at 487.

Crucially, the Supreme Court has held that a prior version of § 1252(g) barred claims similar to those brought here. See *AADC*, 525 U.S. at 487-92. In a case in which aliens alleged that the "INS was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights," *id.* at 473-74, and the government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action," *id.* at 488 n.10, the Supreme Court nonetheless held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)," *id.* at 487*; see Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020). *AADC*

confirms that an alien cannot avoid the reach of §1252(g) by alleging continued detention while executing a removal order in violation of his constitutional rights. *See, e.g., AADC*, 525 U.S. at 487-92; *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999).

The APA simply offers no relief in this case. The INA provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action" to remove an alien are "available only in judicial review of a final order [of removal]." 8 U.S.C. § 1252(b)(9) (emphasis added). Thus, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals." 8 U.S.C. §1252(a)(5), (b)(2).

Additionally, the allegations of the Petition do not clearly identify what mandatory internal policies ICE has allegedly violated. Petitioner alleges he was eligible for release as of January 31, 2024. [Para. 96]. However, the IJ opinion was not issued until September 24, 2024, and the order of removal was not final until the BIA dismissed the Government's appeal on February 6, 2025. And, the Petition establishes that custody was reviewed within 90 days of the Board's decision. [Rec. Doc. 1-4]. The APA and *Accardi* doctrine simply do not apply to this matter.

CONCLUSION

The Petitioner seeks release from his post-removal detention. The Supreme Court in *Zadvydas* provides Petitioner his only appropriate standard for relief.

Petitioner, however, does not satisfy the requirements of the *Zadvydas* standards, i.e. he does not satisfy his burden of proving good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. Consequently, his petition for writ of habeas corpus should be denied.

Respectfully submitted,

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