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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Daniel Avila Marin,
 13
 14 Petitioner,
 15
 16 v.
 Pamela Bondi, *et al.*
 17
 Respondents.

No. CV-25-03251-PHX-SMB (JFM)


**ANSWER TO PETITION FOR A
 WRIT OF HABEAS CORPUS
 PURSUANT TO 28 U.S.C. § 2241**

18 Respondents Pamela Bondi, Attorney General of the United States, John Cantu,
 19 U.S. Immigration and Customs Enforcement Phoenix Field Office, Kristi Noem, Secretary
 20 of Department of Homeland Security (DHS), Luis Rocha, Warden, Florence Correctional
 21 Center, Todd M. Lyons, Acting Director, Immigration and Customs Enforcement (ICE)
 22 (Respondents), through undersigned counsel, answers the Petition for Writ of Habeas
 23 Corpus. Doc. 1. Petitioner is subject to a valid reinstated removal order allowing detention,
 24 and whose removal is likely in the reasonably foreseeable future based on recent efforts.
 25 Petitioner fails to demonstrate a violation of his due process rights under the Fifth
 26 Amendment and his claims under the APA and Suspension Clause lack merit. As such, the
 27 Court should deny his request for habeas relief. The Respondents' Answer is supported by
 28 the following Memorandum of Points and Authorities and attached declaration.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND.

Respondent reproduces below the facts and procedural history contained in its Response filed in Opposition to Petitioner’s Request for a Temporary Restraining Order and attaches the same foundational exhibit. Doc. 9.

Petitioner Daniel Avila Marin (Petitioner) is a native and citizen of Mexico born on  in Jalisco, Mexico. *See* Declaration of Nellie Martinez, Deportations Officer, attached as Exhibit A, at ¶ 3. Petitioner entered the United States without inspection near Calexico, California in 1981, and obtained lawful permanent resident status in 1989. *Id.* at ¶¶ 4-5. He was convicted of a felony, specifically possessing cocaine, before the California Superior Court on December 13, 1994. *Id.* at ¶ 6. Immigration and Naturalization Service (INS) placed him in deportation proceedings upon issuing him a Form I-221 Order to Show Cause (OSC) following his criminal conviction. *Id.* at ¶ 7. OSC charged him with having been convicted of a controlled substance offense under former section 241(a)(2)(B)(i) of the Immigration and Nationality Act (INA) and an aggravated felony under former section 241(a)(2)(A)(iii) of the INA. *Id.* at ¶ 8. On October 29, 1997, an Immigration Judge (IJ) ordered Petitioner removed to Mexico. *Id.* at ¶ 9. On or around November 26, 1997, he appealed the IJ’s decision to the Board of Immigration Appeals (BIA). *Id.* at ¶ 10.

The BIA dismissed his appeal on March 22, 2002. *Id.* at ¶ 11. On November 5, 2013, he was removed to Mexico. *Id.* at ¶ 12. He reentered the United States without inspection on or around December 13, 2013. *Id.* at ¶ 13. That same day, on December 13, 2013, U.S. Border Patrol (USBP) issued him a Form I-871 Notice of Intent/Decision to Reinstate Prior Order. *Id.* at ¶ 14. The Form I-871 notified Petitioner that DHS was reinstating the deportation order issued on October 29, 1997. *Id.* at ¶ 14. He was subsequently removed to Mexico based on the reinstated deportation order on June 10, 2014. *Id.* at ¶ 15. On May 15, 2024, USBP encountered Petitioner in Nogales, Arizona, after he made another illegal entry. *Id.* at ¶ 16. USBP issued him another Form I-871 Notice of Intent/Decision to Reinstate Prior Order, this time, charging him with violating section 241(a)(5) of the INA,

1 8 U.S.C. § 1231(a)(5), as a noncitizen who has illegally reentered the United States after
2 having been previously removed or deported voluntarily while under an order of exclusion,
3 deportation or removal. *Id.* That day, he presented to the United States District Court for
4 the District of Arizona for violating 8 U.S.C. § 1325(a)(1), illegal entry and § 1326(a),
5 illegal reentry and he transferred to the U.S. Marshals Service (USMS) custody. *Id.* He was
6 convicted and sentenced to serve 120 days imprisonment with USMS. *Id.*

7 Petitioner was received into ICE custody, in Florence, Arizona, pending removal to
8 Mexico, on September 12, 2024. *Id.* at ¶ 17. He claimed fear of returning to Mexico and
9 ICE referred his case to an asylum officer for a reasonable fear interview the next day, on
10 September 13, 2024. *Id.* at ¶ 18. On September 30, 2024, the asylum officer found that
11 Petitioner had a reasonable fear of returning to Mexico, and the case was referred to an IJ
12 to allow him to pursue withholding-only proceedings, which was continued three times. *Id.*
13 at ¶¶ 19-20. On March 10, 2025, the IJ denied his request for bond because his attorney
14 withdrew the request for a bond. *Id.* at ¶ 21. On April 2, 2025, the IJ denied his applications
15 for withholding of removal but granted him relief under the Convention Against Torture
16 (CAT). *Id.* at ¶ 22. DHS did not file an appeal. *Id.* at ¶ 23.

17 As to the status of removal, ICE notified the ERO Removal Management Division
18 (RMD) in Washington, DC, that Spain, Guatemala, and El Salvador were reached out for
19 third country removal, per new guidance, on July 20, 2025. *Id.* at ¶ 24. ICE inquired with
20 RMD in Washington, DC, on a follow up on third country removal status on August 17,
21 2025. *Id.* at ¶ 25. On September 2, 2025, ICE inquired with RMD in Washington, DC,
22 about follow up on the status of third country removal. *Id.* at ¶ 26.

23 The U.S. Attorneys' Office for the District of Arizona was served with a copy of the
24 Petition on September 16, 2025, making the Respondents' 20-day response deadline
25 October 6, 2025. Petitioner claims that "the INA and its applicable regulations do not
26 permit continual detention of Petitioner after he has been afforded immigration relief and
27 surpassed the 90-day removal allotment given under the INA." Doc. 1 at 21. Petitioner
28

1 claims that his detention violates the Fifth Amendment, APA, Suspension Clause, and
2 creates a state-created danger. Doc. 1.

3 **II. Standard of Review.**

4 Under Federal Rule of Civil Procedure 12(b)(1), a court may grant a motion to
5 dismiss for lack of subject matter jurisdiction. *Tosco Corp. v. Cmty. for a Better Env't*,
6 236 F.3d 495, 499 (9th Cir. 2001). When subject matter jurisdiction is challenged under
7 Rule 12(b)(1), the plaintiff has the burden of proving jurisdiction to survive the motion. *Id.*
8 (citing *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989)).

9 A court may grant a motion to dismiss pursuant to Federal Rule of Civil Procedure
10 12(b)(6) for failure to state a claim upon which relief may be granted. To survive a motion
11 to dismiss for failure to state a claim, the plaintiff must plead facts sufficient to “raise a
12 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
13 (2007). On a motion to dismiss, courts “are not bound to accept as true a legal conclusion
14 couched as a factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286, (1986). “Threadbare
15 recitals of the elements of a cause of action, supported by mere conclusory statements, do
16 not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

17 **III. LEGAL FRAMEWORK.**

18 **A. Reinstated Removal Orders and Withholding Only Proceedings.**

19 Congress has created an expedited process for aliens, like Petitioner, who
20 unlawfully re-enter the United States, having already been removed after lengthy removal
21 proceedings. The relevant statutory provision states:

22 “If the Attorney General finds that an alien has reentered the United States
23 illegally after having been removed or having departed voluntarily, under an
24 order of removal, the prior order of removal is reinstated from its original date
25 and is not subject to being reopened or reviewed, the alien is not eligible and
26 may not apply for any relief under this chapter, and the alien shall be removed
27 under the prior order at any time after the reentry.”

28 8 U.S.C. § 1231(a)(5); *Johnson v. Guzman Chavez*, 594 U.S. 523, 529–30 (2021).

1 Section 1231(a)(5) applies to “all illegal re-entrants,” and it “explicitly insulates the
2 removal orders from review,” while also “generally foreclos[ing] discretionary relief from
3 the terms of the reinstated order.” *Id.* (internal citations omitted). It does not, however,
4 preclude an alien from pursuing withholding-only relief to prevent DHS from executing
5 his removal to the particular country designated in his reinstated removal order. *Id.*
6 (internal citations omitted); *see also* § 1231(b)(3)(A).

7 “There are two paths for seeking withholding of removal. First, the alien may seek
8 statutory withholding under § 1231(b)(3)(A), which provides that “the Attorney General
9 may not remove an alien to a country if the Attorney General decides that the alien’s life
10 or freedom would be threatened in that country because of the alien’s race, religion,
11 nationality, membership in a particular social group, or political opinion.” Second, the alien
12 may seek withholding under regulations implementing the Convention Against Torture and
13 Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, S.
14 Treaty Doc. No. 100–20, 1465 U. N. T. S. 113, which prohibits removal of an alien to a
15 country where the alien is likely to be tortured.” *Guzman Chavez*, 594 U.S. at 530–31
16 (citing 8 CFR §§ 208.16–208.17, 1208.16–1208.17.)

17 The process for applying for withholding of removal depends on whether the alien
18 is subject to standard removal proceedings or a reinstated order of removal. An alien
19 subject to the standard removal process typically applies for withholding during the course
20 of his regular removal proceedings. But because an alien subject to a reinstated order of
21 removal does not have any removal proceedings, the process begins only if the individual
22 expresses a fear to DHS of returning to the country of removal specified in the reinstated
23 removal order. *Guzman Chavez*, 594 U.S. at 531 (citing §§ 208.31(a), 1208.31(a)). At that
24 point, DHS will refer the individual to an asylum officer for a reasonable fear
25 determination, which will normally be conducted within 10 days of the referral. *Id.* (citing
26 §§ 208.31(b), 1208.31(b)). If the asylum officer concludes that the alien has a reasonable
27 fear, he will refer the matter to an IJ for initiation of withholding-only proceedings. *Id.*
28 (citing §§ 208.31(e), 1208.31(e)). Those proceedings are “limited to a determination of

1 whether the alien is eligible for withholding or deferral of removal,” and as such, “all
2 parties are prohibited from raising or considering any other issues, including but not limited
3 to issues of admissibility, deportability, eligibility for waivers, and eligibility for any other
4 form of relief.” *Id.* (citing §§ 208.2(c)(3)(i), 1208.2(c)(3)(i)). The IJ’s final decision as to
5 withholding can be appealed to the BIA. *Id.* (citing §§ 208.31(e), 1208.31(e)).

6 CAT protection does not alter whether an alien may be removed or their underlying
7 removal order; it affects only the countries to which an alien may be removed. That is, a
8 grant of CAT protection “means only that notwithstanding the order of removal, the
9 noncitizen may not be removed to the designated country of removal, at least until
10 conditions change in that country.” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The
11 United States remains free to remove that alien “at any time to another country where he
12 or she is not likely to be tortured.” *Id.* (citation omitted); *see INS v. Cardoza-Fonseca*, 480
13 U.S. 421, 428 n.6 (1987). Ordinarily, an alien raises a CAT claim during removal
14 proceedings under 8 U.S.C. § 1229a, where the immigration court decides both the alien’s
15 removability and CAT claim together. *See, e.g.*, 8 C.F.R. § 1240.1(a)(1)(iii), 1240.12(c);
16 *Matter of I-S- & C-S-*, 24 I&N Dec. 432, 433-34 (BIA 2008). But sometimes, CAT claims
17 arise outside of those removal proceedings. For instance, aliens subject to a reinstated order
18 of removal—where the prior order of removal is restored—may nonetheless seek CAT
19 protection in “withholding-only” proceedings. *See Johnson v. Guzman Chavez*, 594 U.S.
20 523, 530 (2021). Likewise, aliens placed in expedited-removal proceedings are still able to
21 raise CAT claims, and receive administrative procedures, the extent of which depends on
22 the claim’s credibility. *See, e.g.*, 8 C.F.R. § 235.3(b)(4).

23 If an alien is granted withholding-only relief, DHS may not remove the alien to the
24 country designated in the removal order unless the order of withholding is terminated.
25 *Guzman Chavez*, 594 U.S. at 531–32 (citing §§ 208.22, 1208.22). But because withholding
26 of removal is a form of “country specific” relief, *INS v. Cardoza-Fonseca*, 480 U.S. 421,
27 428, n. 6 (1987), nothing prevents DHS “from removing [the] alien to a third country other
28

1 than the country to which removal has been withheld or deferred.” *Id.* (citing §§ 208.16(f),
2 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)).

3 In this case, Petitioner is subject to a reinstated final removal order—that is a
4 removal order that is a result of the conclusion of removal proceedings where Petitioner
5 had the opportunity to be heard on any claim to relief from removal anywhere in the world.
6 In the case of reinstated removal orders, like the one in this case, because they are final
7 orders under which much process was previously afforded during the full course of removal
8 proceedings, there is limited process available for country specific relief from removal
9 under a reinstated final order. Withholding of removal and CAT relief is a country specific
10 relief. Here, Petitioner has only requested, and been granted, CAT relief as to Mexico. He
11 is therefore currently unremovable to Mexico. As the Court held in *Guzman-Chavez*,
12 “nothing prevents DHS “from removing [the] alien to a third country other than the country
13 to which removal has been withheld or deferred.”” *Guzman Chavez*, 594 U.S. at 531–32
14 (citing §§ 208.16(f), 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)).

15 **B. The Nationwide Injunction in D.V.D. and the Supreme Court’s Stay.**

16 Petitioner is a *D.V.D* class member. Doc. 1 at 11. Petitioner’s claims seeking
17 additional, extra-statutory procedures prior to removal from the United States to a third
18 country are already being adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v.*
19 *Department of Homeland Security*, No. 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*,
20 520 U.S. 681, 706 (1997) (noting that a district court “has broad discretion to stay
21 proceedings as an incident to its power to control its own docket). As part of district courts’
22 discretion to administer their docket, courts have dismissed, without prejudice, suits
23 brought by individuals whose claims are duplicative of class claims in other litigation. *See,*
24 *e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay
25 of Fifth Amendment challenge pending completion of pending class action).

26 Petitioner seeks Petitioner’s claims seeking to delay or otherwise prohibit his
27 removal to a third country until ICE complies with extra-statutory procedures substantially
28

1 overlap with the nationwide class action. On April 18, 2025, the court in *D.V.D.* certified,
2 pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

3 All individuals who have a final removal order issued in proceedings
4 under Section 240, 241(a)(5), or 238(b) of the INA (including
5 withholding-only proceedings) whom DHS has deported or will deport on
6 or after February 18, 2025, to a country (a) not previously designated as
7 the country or alternative country of removal, and (b) not identified in
8 writing in the prior proceedings as a country to which the individual
9 would be removed.

10 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at
11 *11 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL
12 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025
13 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*
14 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,
15 2025). Petitioner makes no mention of his class membership in his Petition.

16 Because the *D.V.D.* class was certified pursuant to Rule 23(b)(2), *see D.V.D.*, 2025
17 WL 1142968, at *14, 18, and 25, membership in the class is mandatory with no opportunity
18 to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that
19 Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does
20 not even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v.*
21 *Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025)
22 (noting that “23(b)(2) class members have no opportunity to opt out”). The *D.V.D.* court
23 entered a nationwide preliminary injunction requiring DHS to comply with various
24 procedures prior to removing a class member to a third country. The Supreme Court stayed
25 that preliminary injunction pending the disposition of an appeal in the First Circuit and a
26 petition for a writ of certiorari. *Department of Homeland Secretary v. D.V.D.*, 145 S. Ct.
27 2153 (2025). The case remains pending.

28 **C. Standard Governing Detention of Aliens with Final Removal Orders.**

The detention, release, and removal of aliens subject to a final order of removal is governed by § 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231. Pursuant to INA § 241(a), the Attorney General has 90 days to remove an alien from the

1 United States after an order of removal becomes final. During this “removal period,”
2 detention of the alien is mandatory. *Id.* After the 90-day period, if the alien has not been
3 removed and remains in the United States, his detention may be continued, or he may be
4 released under the supervision of the Attorney General. INA § 241, 8 U.S.C. § 1231(a)(3)
5 and (a)(6). Under this section, ICE may detain an alien for a “reasonable time” necessary
6 to effectuate the alien’s removal. INA § 241(a), 8 U.S.C. § 1231(a). However, indefinite
7 detention is not authorized by the statute. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).
8 In *Zadvydas*, the Supreme Court defined six months as a presumptively reasonable period
9 of detention for aliens, like petitioner, detained under section 1231(a). *See Zadvydas*, 533
10 U.S. at 701-702. *Zadvydas* places the burden on the alien to show, after a detention period
11 of six months, that there is “good reason to believe that there is no significant likelihood of
12 removal in the reasonably foreseeable future.” *Id.* at 701.

13 If the alien makes that showing, the Government must then introduce evidence to
14 refute that assertion to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832,
15 839-40 (9th Cir. 2002). The court must “ask whether the detention in question exceeds a
16 period reasonably necessary to secure removal. It should measure reasonableness primarily
17 in terms of the statute’s basic purpose, namely, assuring the alien’s presence at the moment
18 of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued
19 detention unreasonable and no longer authorized by statute.” *Zadvydas*, 533 U.S. at 699.

20 **IV. The Habeas Petition Should Be Denied.**

21 Petitioner raises several claims, including some that are not cognizable in a habeas
22 action. He asserts that his detention violates (1) the APA, (2) Suspension Clause, and (3)
23 Fifth Amendment due process rights. Doc. 1 at 26-30. He also claims that his detention is
24 punitive in nature. *Id.* at 31-32. Respondent will address the due process claims first.

25 **A. Petitioner’s detention does not violate his due process rights.**

26 As to the detention period, although the Supreme Court in *Zadvydas* designated six
27 months as a presumptively reasonable period of time to allow the government to remove
28 an alien detained under 8 U.S.C. § 1231(a), an alien is not automatically entitled to release

1 after six months of detention. *Id.* at 701 (“This 6-month presumption, of course, does not
2 mean that every alien not removed must be released after six months. To the contrary, an
3 alien may be held in confinement until it has been determined that there is no significant
4 likelihood of removal in the reasonably foreseeable future.”) (emphasis added). The
5 passage of time alone is insufficient to establish that no significant likelihood of removal
6 exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118
7 (W.D. Wash. 2002). In *Lema*, where the petitioner had been detained for more than a year,
8 the district court held that the passage of time was only the first step in the analysis, and
9 that the petitioner must then provide good reason to believe that no significant likelihood
10 of removal exists in the reasonably foreseeable future. *Id.*

11 Petitioner’s length of detention, which is not prolonged, is governed by 8 U.S.C. §
12 1231 and *Zadvydas*. Petitioner was received into ICE custody from USMS on September
13 12, 2024, in Florence, Arizona, following his 120-day imprisonment. Petitioner’s prior
14 final removal order was reinstated pursuant to 8 U.S.C. § 1231(a)(5). Ex. A at ¶ 16. The
15 only relief from removal available for those subject to reinstated final removal orders is
16 withholding of removal to the country specified in the reinstated removal order. 8 U.S.C.
17 § 1231(b)(3)(A). He remains removable however, to any country from which he did not
18 claim a fear of return in his prior removal proceedings. *Guzman Chavez*, 594 U.S. at 531–
19 32 (holding that “nothing prevents DHS “from removing [the] alien to a third country other
20 than the country to which removal has been withheld or deferred.”). As such, his detention
21 does not violate his due process rights.

22 **B. Petitioner Has Not Met His Burden to Establish There Is No Substantial**
23 **Likelihood of Removal in the Reasonably Foreseeable Future.**

24 At this time, there is no impediment to Petitioner’s removal except to Mexico. He
25 possesses a valid final executable order of removal, that only prevents removal to Mexico,
26 because that is all he is eligible for pursuant to a reinstated final removal order. Petitioner
27 cannot establish that there is no likelihood of his removal in the reasonably foreseeable
28 future as required to prevail under *Zadvydas*. 533 U.S. at 701. As addressed above, removal

1 to Spain, Guatemala, and El Salvado, are being considered. Ex. A at ¶ 24. Follow up
2 regarding third party removal status occurred as recently as September 2, 2025. *Id.* at ¶ 26.
3 Here, though Respondent recognizes that Petitioner has been detained beyond the 90-day
4 period as outlined under *Zadvydas*, but recent efforts are underway to effectuate his
5 removal to a third country. Thus, the habeas petition should be denied.

6 **C. Petitioner Brings Improper Habeas Claims.**

7 An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody”
8 under federal authority “in violation of the Constitution or laws or treaties of the United
9 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge *only* the legality
10 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
11 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
12 *Thuraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
13 “provide[s] a means of contesting the lawfulness of restraint and securing release.”). The
14 Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
15 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude the
16 relevant question is whether, based on the allegations in the petition, release is legally
17 required irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072; *see also Nettles v.*
18 *Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key inquiry is whether success on the
19 petitioner’s claim would “necessarily lead to immediate or speedier release.”).

20 **i. APA Claims.**

21 Notably, seeking judicial review under the Administrative Procedure Act (APA) is
22 not properly sought through a habeas petition. Doc. 1 at 19. *See Flores-Miramontes v. INS.*,
23 212 F.3d 1133, 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, “judicial
24 review” refers to petitions for review of agency actions, which are governed by the
25 Administrative Procedure Act, while habeas corpus refers to habeas petitions brought
26 directly in district court to challenge illegal confinement.”). Doc. 1 at 19-21. Here,
27 Petitioner’s APA attack on the Trump Administration’s policy regarding the expansion of
28 expedited removals fall outside the scope of relief provided for in a habeas petition

1 particularly where it fails to challenge the legality or duration of Petitioner’s confinement.
2 *Giron Rodas v. Lyons*, No. 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug.
3 1, 2025) (“Like in *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas
4 petition since it cannot be fairly read as attacking ‘the legality or duration of
5 confinement.’”) (quoting *Pinson*, 69 F.4th at 1065).

6 The APA permits judicial review of an agency action only if “there is no other
7 adequate remedy in a court[.]” *see* 5 U.S.C. § 704, which means that a federal court lacks
8 jurisdiction over an APA claim if another statute would allow a court to review the
9 allegedly unlawful agency action. *See Coos Cty. Bd. of Cty. Cm’rs v. Kempthorne*, 531 F.3d
10 791, 810 (9th Cir. 2008) (citing 5 U.S.C. § 704); *Brem-Air Disposal v. Cohen*, 156 F.3d
11 1002, 1004–05 (9th Cir. 1998) (“‘If a plaintiff can bring suit against the responsible federal
12 agencies under [another statute], this action precludes an additional suit under the APA.’ ”
13 (quoting *Env’tl. Def. Fund v. Tidwell*, 837 F. Supp. 1344, 1356 (E.D.N.C. 1992))); *Trinidad*
14 *y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (“The writ of habeas corpus
15 historically provides a remedy to non-citizens challenging executive detention.”).
16 Petitioner’s APA claims lack merit.

17 **ii. State-Created Danger.**

18 With no factual support and relying entirely on case law inapplicable to the habeas
19 context, Petitioner alleges that he can “easily” show that the government acted with
20 deliberate indifference. Doc. 1 at 29. To the extent this argument applies to habeas actions,
21 there is no factual support suggesting the government placed Petitioner in danger or acted
22 deliberately indifferent to his due process rights. *Kennedy v. City of Ridgefield*, 439 F.3d
23 1055, 1062 (9th Cir. 2006). Petitioner is detained pursuant to a reinstated final order of
24 removal and efforts are underway to effectuate his removal. These claims also lack merit.

25 **iii. Suspension Clause.**

26 Petitioner provides no support for his claim that his continued detention “without
27 any opportunity for meaningful judicial review violates the Suspension Clause.” Doc. 1 at
28 27. “The Suspension Clause states, “the privilege of the writ of habeas corpus shall not be

1 suspended, unless when in cases of rebellion or invasion the public safety may require it.”
2 U.S. Const., art. I, § 9, cl. 2. To the extent this is a cognizable claim, or has any connection
3 to this mater, the facts in this case most definitely do not rise to a violation of the
4 Suspension Clause. Petitioner has not shown that he has been denied meaningful judicial
5 review sufficient to warrant a violation of the Suspension Clause. Once Petitioner was in
6 ICE custody pending removal following his prison sentence, ICE immediately referred his
7 case to an asylum officer for a reasonable fear interview the day after he made a fear claim
8 to Mexico, on September 13, 2024. Ex. A at ¶ 18.

9 On September 30, 2024, the asylum officer found that Petitioner had a reasonable
10 fear of return to Mexico, and the case was referred to an IJ to allow him to pursue
11 withholding-only proceedings, which was continued three times. *Id.* at ¶¶ 19-20. On March
12 10, 2025, the IJ denied his request for bond because his attorney withdrew the request for
13 a bond. *Id.* at ¶ 21. On April 2, 2025, the IJ denied his applications for withholding of
14 removal but granted him relief under the Convention Against Torture (CAT) as to Mexico.
15 *Id.* at ¶ 22. Petitioner has been afforded meaningful judicial review.

16 As Petitioner fails to raise a due process violation, or a breach of his rights under
17 related theories, he has additionally failed to demonstrate that his detention is punitive in
18 nature.

19 **V. CONCLUSION.**

20 For the reasons explained above, Respondents’ respectfully request this Court deny
21 the Petition for Writ of Habeas Corpus.

22 Respectfully submitted on October 6, 2025.

23 TIMOTHY COURCHINE
24 United States Attorney
25 District of Arizona

26 /s/ Lindsey E. Gilman
27 LINDSEY E. GILMAN
28 Assistant United States Attorney
Attorneys for Respondents