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

ARTUR TCHIBASSA,

Petitioner,

v.

JIMMY JOHNSON, ET AL,

Respondents.

Civil Action No. 3:25-CV-02604-N-BN

RESPONSE IN OPPOSITION TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND TEMPORARY RESTRAINING ORDER

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I. INTRODUCTION

Petitioner seeks a preliminary injunction and habeas relief to require his immediate release from immigration detention. *See* ECF 11. As explained herein, Petitioner shows no entitlement to a temporary restraining order, nor habeas relief, as he is not entitled to immediate release. The Court should deny the request for a temporary restraining order and habeas relief. In the alternative, the Court should stay or dismiss the Petition on the grounds that the Petitioner is a class member in a nationwide class certified in *D.V.D. v U.S. Department of Homeland Security*, ECF 118, 64 and 6-1 Civ. 25-10676-BEM (D. Mass. April 18 and May 21, 2025) ("*D.V.D.* Memorandum and Order"), where the procedures governing third country removals, such as the instant case, are being litigated. Furthermore, statutory authority and Supreme Court precedent allow for Petitioner's detention and provide for that detention.

II. FACTUAL BACKGROUND

A. Petitioner is subject to a final order of removal.

Petitioner is a citizen of Angola who entered the country as an arriving alien at San Juan, Puerto Rico on or about July 13, 2002. App. p. 6. Petitioner was paroled into the United States for criminal prosecution. *Id.* On February 27, 2004, Petitioner was convicted of Conspiracy to Commit Hostage Taking in violation of 18 U.S.C. § 371 and sentenced to 60 months of imprisonment. App. pp. 10-11. He was also convicted of Hostage Taking and Aiding and Abetting in violation of 18 U.S.C. §§1203, 2 and sentenced to 293 months of imprisonment. *Id.*

On May 17, 2023, Petitioner was placed in removal proceedings through issuance of a Notice to Appear and was charged as removable under 212(a)(7)(A)(i)(I). App. p. 16. On May 26, 2023, an additional charge was added to the Notice to Appear under INA § 212(a)(2)(A)(i)(I). *Id.*

Petitioner filed his application for asylum (I-589) on June 16, 2023, and on September 28, 2023, an IJ denied Petitioner's DCAT and ordered him removed to Angola. Petitioner appealed the IJ's decision on October 6, 2023. App. p. 25. On February 28, 2024, the BIA issued an order to remand the record for further proceedings and on June 17, 2024, IJ granted DCAT. App. p. 23.

On July 17, 2024, DHS appealed the IJs decision but, on December 20, 2024, the BIA dismissed the appeal and further ordered that the IJ's decision granting Petitioner's application for DCAT to Angola under the CAT is affirmed. App. p. 8. In light of that ruling, Petitioner cannot be removed to Angola, his country of origin, and instead his removal from the United States will be a third-country.

On September 25, 2025, Petitioner filed a Petition for Writ of Habeas Corpus, which he amended petition on December 1, 2025. ECF No. 11.

B. There is currently a certified nationwide non-opt out class action pending in the District of Massachusetts that includes Petitioner.

In March 2025, three plaintiffs instituted a putative class action suit challenging their third country removals in the District of Massachusetts captioned *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.). On March 28, 2025, that court entered a Temporary Restraining Order (ECF No. 34 at 2) ("*D.V.D.* TRO") enjoining DHS and others from

"[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings" unless certain conditions are met. On April 18, 2025, the district court in *D.V.D.* issued an order (*D.V.D.*, 25-10676-BEM) (ECF No. 64) granting the plaintiffs' motion for class certification (ECF No. 4) and motion for preliminary injunction. ECF No. 6. That Preliminary Injunction was national in effect, certifies a non-opt out class, and establishes certain procedures that DHS must follow before removing an alien with a final order of removal to a third country. Specifically, the class is defined as:

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

D.V.D. ECF No. 64 at p. 23.

On May 21, 2025, the *D.V.D.* Court issued a Memorandum on Preliminary Injunction (ECF 118) offering the following summary and clarification of its Preliminary Injunction:

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

> a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings. *Id.*

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

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts' preliminary injunction pending appeal in the United States First Circuit Court of Appeals. *Department of Homeland Security v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). That same day, the District Court of Massachusetts ordered that its remedial order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (ECF No. 176). Defendants moved to clarify the Supreme Court's Order and, on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

III. LEGAL STANDARDS

A. Legal framework governing removal of aliens, who have received final orders of removal, to third countries.

The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations

implanting the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official. The standard for "torture" is a high bar and is plainly not easily met.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (*see*, 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional, specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note. On March 30, 2025, the Department of Homeland Security ("DHS") issued guidance detailing its policy in this context. *See* Executive Order 14165, 90 Fed. Reg. 8467.

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. A section applies for countries where the United States has not received such an assurance. In that case, the DHS policy provides that the alien is entitled to notice of the third county and an opportunity for a prompt screening of any asserted fear of being tortured there.

IV. ARGUMENT

A. Because Petitioner is a member of an already-certified, non-opt out class action, dismissal or stay is appropriate.

Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who ICE plans to remove to a third country. Because Petitioner is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide injunction, which the Supreme Court has now stayed finding that the Government is likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Given that dismissal is the appropriate remedy, Petitioner is not entitled to the relief sought in the Petition for Writ of Habeas Corpus.

As explained above, the District of Massachusetts entered a preliminary injunction prescribing the process to which *D.V.D.* class members were entitled before removal to a third country and certified a non-opt out class of which Petitioner is undisputedly a member. The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims and the Government would ultimately prevail.

First, this Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, the Petition challenges how Respondents should implement Petitioner's third country removal. ECF No. 11, ¶ 19, 22-23. That is precisely the challenge brought by the *D.V.D.* class. This

Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts.

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Defendants are likely to succeed on the legal arguments presented in response to the instant habeas petition. Allowing Petitioner's habeas petition to proceed on the ground that ICE allegedly failed to follow the procedures set forth in the *D.V.D.* preliminary injunction in executing his removal to a third country and continuing to stay his removal to a third country would therefore be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* As a result, this Court should not require Respondents to provide the degree of process described in the *D.V.D.* preliminary injunction before removing Petitioner to a third country because the

Supreme Court will, by all indications, eventually hold that such process is not required under the law.

Additionally, courts recognize that members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). The Fourth Circuit has observed that at least four Courts of Appeals have affirmatively held, in the prisoner context, that "it is error to allow a prisoner to prosecute a separate action once his class has been certified." *Horns v. Whalen*, 922 F.2d 835, 835 (4th Cir. 1991) (table op.) (finding district court did not abuse discretion when it declined to decide an issue that overlapped with a class action "to avoid the risk of inconsistent adjudications); *see also id.* at n.4 (collecting district court cases).

This Court should decline to exercise jurisdiction over the Petition as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim he pursues in Maryland. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."); *see also, e.g.*, *Goff*, 672 F.2d at 704; *Horns*, 922 F.2d at 835; *McNeil v. Guthrie*, 945 F.2d 1163,

1165 (10th Cir. 1991) (individual suits for injunctive and declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (duplicative suits should be dismissed once class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (class member should not be permitted to pursue individual lawsuit seeking equitable relief within subject matter of class action); *Bryan v. Werner*, 516 F.2d 233, 239 (3d Cir. 1975) (district court did not err in refusing to consider issue pending in a separate class action). Thus, dismissal is warranted.

B. Alternatively, this Court should stay proceedings pending the resolution of *D.V.D.*

District courts have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 11410411, at *2 (M.D. Ga. Dec. 16, 2016) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936), *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 665 (1978), and *P.P.G. Indus. Inc. v. Cont'l 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). "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).

Here, staying this case avoids the potential for conflicting decisions on central issues. *See Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. Oct. 27, 2017); Fed. R. Civ. P. 23(b)(1)(A) (permitting a class action to proceed when "prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class. . ."); *id.* at (b)(2) (permitting a class action when "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.").

Because the District Court for the District of Massachusetts has certified a class that already has and will continue to address Petitioner's claims, staying this proceeding would be prudent as a matter of comity. *Cf Munaf*, 553 U.S. at 693 ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"). There is little sense in resolving Petitioner's Writ of Habeas Corpus when the class action, which includes this Petitioner, is already well under way. Dismissing, or at a minimum, staying these proceedings to allow resolution of a nationwide class action to which Petitioner belongs allows for consistent treatment and promotes efficiency. To the extent this Court is inclined to stay this action, the Parties could submit periodic status reports or conduct telephonic conferences until the *D.V.D.* nationwide class action is resolved, the resolution of which would necessarily resolve Petitioner's claims.

C. Petitioner's claims fail on the merits because ICE is authorized to detain and deport him.

Petitioner's claims also fail on the merits. As explained further below, ICE can lawfully detain Petitioner because he is subject to a final order of removal and can be detained under 8 U.S.C. § 1231(a)(6). Second, following Supreme Court precedent, his claim that his detention violates the Due Process Clause is not unreasonable or unauthorized.

1. ICE lawfully detained Petitioner pursuant to 8 U.S.C. § 1231(a).

ICE's detention authority stems from 8 U.S.C. § 1231 which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days, which is known as the "removal period." During the removal period, ICE must detain the alien. 8 U.S.C. § 1231(a)(2) ("shall detain"). If the removal period expires, ICE can either release an individual pursuant to an Order of Supervision as directed by § 1231(a)(3) or may continue detention under § 1231(a)(6). ICE may continue detention beyond the removal period for three categories of individuals: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or (iii) those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6)(A).

Petitioner is outside the 90-day mandatory removal period. However, he is still eligible for ICE detention as he is an alien with a final order of removal who has been convicted of two crimes involving a crime of moral turpitude under 8 U.S.C. § 1227(a)(2)(A)(i)(I). As such, ICE has statutory authority to detain Petitioner to effectuate

his removal order from the United States and he is not entitled to a bond hearing or release as § 1231(a)(6) does not require such process. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 574, 581 (2022) (holding § 1231(a)(6)'s plain text "says nothing about bond hearings before immigration judges or burdens of proof"). Petitioner points to no authority suggesting the 90-day mandatory detention period is the only lawful period during which ICE can detain and remove an individual. Petitioner's detention is therefore lawful under § 1231(a)(6) and this Court should dismiss his Petition.

2. Petitioner's continued detention is lawful.

Petitioner's claim that his detention violates the Fifth Amendment lacks merit, because his continued detention is lawful. The Supreme Court set forth a framework to mount a Due Process challenge to post-final order detention in *Zadvydas v. Davis*, 533 U.S. 678 (2001). That framework provides that, while the government cannot indefinitely detain an alien before removal, detention for up to six months is "presumptively reasonable." *Id.* at 701. That said, while the Court designated six months as a presumptively reasonable period of post-order detention, it made clear that the presumption "does not mean that every alien not removed must be released after six months." *Id.* at 701.

The Supreme Court has recognized that "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. To

set forth a constitutional violation for § 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "Zadvydas, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established.").

In *Zadvydas*, the Supreme Court considered the government's ability to detain an alien subject to a final order of removal before the removal is effectuated. 533 U.S. at 699. The Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period, limiting "post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 682, 689. The Court further held that a detention period of six months is "presumptively reasonable." *Id.* at 701. Then after this first six months, the burden is on the petitioner to show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts back to the government to rebut that showing. *Id.*

The "reasonably foreseeable future" is not a static concept. Rather, it is fluid and country-specific, depending in large part on the diplomatic relations between the United States and the subject country that will receive the removed alien. The mechanisms for obtaining a temporary travel document from another country are manifold and include functional considerations of rapport and diplomacy, which are beyond the control of ICE. One court has aptly observed:

> 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 into the hinterlands, simply because his native country is moving slow, would mean that the United States would have effectively ceded its immigration policy to those other countries. The Court does not read the holding in *Zadvydas* as requiring such an extreme result.

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

Additionally, a "lack of visible progress" in the removal process "does not in and of itself meet [the petitioner's] burden of showing that there is no significant likelihood of removal." *Id.* at 1366; *Nagib v. Gonzales*, No. 3:06-CV-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006). "[I]t 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).

Courts should grant the government appropriate leeway where the process of removal to a particular country is closely related to foreign policy judgments and expertise. *See Darwishahmed v. Warden Fed. Detention Ctr. Oakdale*, No. 07-1658, 2008 WL 4450276, at *6 (W.D. La. July 30, 2008) (citing *Zadvydas*, 533 at 700). Relevant to the underlying petition, the removal of an individual to a third country is complicated due to ever-changing diplomatic policy and foreign relations with and the United States and other countries willing to accept a noncitizen. This process is cumbersome and involves significant coordination with multiple agencies, based on the current state of affairs and diplomatic relations.

If 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." *Zadvydas*, 533 U.S. at 701. However, if the alien fails to produce facts indicating that ICE is incapable of executing his removal soon and that his detention will be of indefinite duration, the petition should be dismissed. *Apau v. Ashcroft*, No. 3:02-CV-2652-D, 2003 WL 21801154, at *3 (N.D. Tex. June 17, 2003).

Petitioner fails to show that there is no significant likelihood that his removal will occur in the foreseeable future. Because real progress is being made on Petitioner's removal, he cannot meet his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future.

D. Petitioner is not entitled to a temporary restraining order or preliminary injunction.

Petitioner's preliminary injunction motion is premised on his habeas claim that his detention is unlawful and that he cannot be removed to a third-country without notice. ECF 11. ICE has authority to detain noncitizens such as Petitioner when there is a significant likelihood that the noncitizen may be removed in the reasonable future. Petitioner's detention is proper, and his detention is not unconstitutional. But for all the reasons already discussed above in connection with the consideration of these issues in the context of Petitioner's habeas petition, these claims fail on the merits and therefore Petitioner also is not entitled to any temporary or preliminary relief on them. Petitioner cannot show that these claims are likely to succeed on the merits because, in fact, they fail on the merits as outlined herein. *See Canal Auth. of State of Fla. v. Callaway*, 489

F.2d 567, 572 (5th Cir. 1974).

V. CONCLUSION

For these reasons, the Court should dismiss the Petition, stay consideration of the Petition, or deny relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On December 15, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Ann E. Cruce-Haag
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