IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JOEL RODRIGUEZ ROSALES,	)	
	)	
Petitioner,	)	
v.	)	**Case No. CIV-25-1139-J**
	)	
DON JONES et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Petitioner Joel Rodriguez Rosales seeks a writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1.[1] United States District Judge Bernard M. Jones referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Doc. 3. Respondents have filed a response. Doc. 8.[2] For the reasons set forth below, the undersigned recommends the Court deny habeas corpus relief.

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1 Citations to a court document are to its electronic case filing designation and pagination. Except for capitalization, quotations are verbatim unless otherwise indicated.

2 Petitioner's time to file a reply expires on November 4, 2025. *See* Doc. 5 (establishing deadline to file reply). Given the time-sensitive nature of this Report and Recommendation, the undersigned concludes it is in the interest of justice to promptly file the Report and Recommendation. Petitioner may still object to this Report and Recommendation in the normal course.

I. Factual background.

Petitioner is "a national of Honduras" and the Department of Homeland Security is currently holding him at the Kay County Detention Center in Newkirk, Oklahoma. Doc. 1, at 2, 6.[3]

Petitioner first entered the United States as a minor in 1998 but government officials removed him from the United States to Honduras in 2012 under a final administrative removal order. *Id.* at 4, 6. Petitioner has a criminal record, including:

- On January 18, 2005, he was convicted of robbery and sentenced to three years' imprisonment;
- On November 7, 2007, he was convicted of aggravated assault and sentenced to 36 months' imprisonment;
- On June 7, 2010, he was convicted of domestic battery, resisting a peace officer, and driving under the influence, and was sentenced to one year of imprisonment;
- On April 10, 2017, he was convicted of illegal reentry and sentenced to 180 days; and
- On September 10, 2024, he was arrested for operating under the influence.

Doc. 8, Ex. 2, at 2-3.

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[3] In his petition, Petitioner states that he "may have had temporary residency in Mexico due to his marriage to a Mexican national," but he "is now divorced and never completed the process of obtaining residency in Mexico." Doc. 1, at 6, n.1. He has informed law enforcement officers in the past that he is a Mexican citizen. Doc. 8, Ex. 1, at 1.

On January 19, 2012, Petitioner was issued a final administrative order of removal based on his aggravated felony conviction. *Id.* at 2. Officials removed him from the United States on February 3, 2012. *Id.* at 3.

When he returned to Honduras, Honduran police officers, along with the Mara Salvatrucha (MS-13) criminal gang, began extorting him for money. Doc. 1, at 6. Although he tried to resist the extortion, Honduran police officers kidnapped him and turned him over to MS-13 in 2014. *Id.* They took him to an undisclosed location, hung him from a beam, beat him with a two-by-four, and left him on the side of a road. *Id.*

Following that incident, Petitioner's family helped him return to the United States. *Id.* He reentered in 2017. *Id.* at 6-7. His parents and half-siblings, who are United States citizens, are presently in the States. *Id.* at 6. He "is also in a committed relationship with a United States citizen." *Id.* Petitioner states he has worked jobs and has become active in a church since his arrival in the States. *Id.*

On April 2, 2017, Customs and Border Protection officers apprehended Petitioner. Doc. 8, Ex. 2, at 2. Immigration and Customs Enforcement (ICE) officials then issued him a notice of intent/decision to reinstate the prior order of removal and, after he served time for his illegal reentry conviction, ICE officials deported him to Mexico. *Id.*

Petitioner reentered the United States at an indeterminate time. *Id.* at 3. ICE officials detained him on September 11, 2024, and reinstated his prior removal order. *Id.* Petitioner expressed fear of returning to Honduras, and following a positive reasonable fear determination, ICE officials referred his case to an Immigration Judge (IJ) for withholding-only proceedings. Doc. 1, at 7.

On January 28, 2025, the IJ granted his request for deferral of removal to Honduras under the Convention Against Torture (CAT). *See* Doc. 8, Ex. 4.[4]

ICE stated on May 13, 2025, that it would seek potential third countries for Petitioner's removal where Petitioner is not likely to be tortured. Doc. 1, at 7-8.[5] Petitioner has remained in custody since September 11, 2024, making his physical detention over one year in duration and over six months past his final order of removal. *Id.* at 8.

II. Petitioner's claims.

Petitioner raises three grounds for relief:

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[4] The IJ originally granted Petitioner's request for withholding of removal on December 30, 2024, but later amended the order to grant deferral only after granting a motion to reconsider filed by ICE. Doc. 8, Ex. 2, at 3.

[5] On October 21, 2025, Respondents provided the Court with notice that ICE intends to remove Petitioner to Mexico between October 28 and October 29, 2025. Doc. 9.

> Ground One: Petitioner contends his continued detention is unlawful under 8 U.S.C. § 1231(a)(6), which limits an individual's post-removal detention to a reasonable period.
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> Ground Two: Petitioner contends his substantive due process rights have been violated as he "has a liberty interest under the Fifth Amendment . . . in not being detained for an indeterminate length of time by the Attorney General."
>
> Ground Three: Petitioner contends his procedural due process rights have been violated as "DHS—having failed . . . to designate any country other than Honduras for removal—cannot remove [him] to some other country without providing procedural protections."

Id. at 15-19. Petitioner asks the Court to "[d]eclare that [his] detention and attempts to remove him to a third country violate" his due process rights, the Immigration and Nationality Act, and ICE's pertinent regulations and "order[] Respondents to release [him] immediately." *Id.* at 20.

III. Standard of review.

An application for a writ of habeas corpus "is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Habeas corpus relief is warranted only if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

Petitioner contends that his prolonged detention following the final order for his removal violates 8 U.S.C. § 1231(a). Doc. 1, at 15-16. This statute

dictates that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). "During the removal period, the Attorney General shall detain the alien." *Id.* § 1231(a)(2). The removal period begins on the latest of the following dates:

> (i) The date the order of removal becomes administratively final.
>
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

Id. § 1231(a)(1)(B).

After the removal period, ICE has discretion to detain inadmissible or criminal aliens. *Id.* § 1231(a)(6). However, detention of an alien subject to a final order of removal may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After that, the detainee may bring a habeas action to challenge his detention. *Id.* at 684-85, 688. To obtain habeas relief, the petitioner has the initial burden to show "there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Presuming the petitioner does so, the burden shifts, requiring "the Government [to] respond with evidence sufficient to rebut that showing." *Id.*

Respondents also raise a jurisdictional challenge to Petitioner's procedural due process claim. Doc. 8, at 12 (citing 8 U.S.C. §§ 1252(b)(9) and 1252(g)).

"Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider." *Bowles v. Russell,* 551 U.S. 205, 212 (2007). "A Rule 12(b)(1) motion 'to dismiss for lack of subject matter jurisdiction take[s] two forms:' either a 'facial' or a 'factual' attack.'" *Pueblo of Jemez v. United States*, 790 F.3d 1143, 1148 n.4 (10th Cir. 2015). "A facial attack questions the sufficiency of the [petition's] allegations." *Heldman v. Oklahoma*, No. CIV-19-419-D, 2020 WL 939288, at *2 (W.D. Okla. Feb. 26, 2020). "If the motion challenges only the sufficiency of the jurisdictional allegations in the [petition], the Court confines its review to the pleadings and accepts the allegations in the [petition] as true." *Altstatt v. Bd. of Cnty. Comm'rs for Okla. Cnty.*, No. CIV-22-811-D, 2023 WL 6208550, at *2 (W.D. Okla. Sept. 22, 2023).

Here, Respondents assert a facial jurisdictional challenge, so the Court accepts the allegations in the petition as true.

IV. Analysis

A. Procedural due process claim.

Petitioner asserts that Respondents "cannot remove [him] to some other country without providing procedural protections" such as notice, hearing, and

opportunity to challenge the designated third country. Doc. 1, at 17-18. Respondents contend the Court lacks subject matter jurisdiction to hear Petitioner's procedural due process claim. Doc. 8, at 12.

1. Subject matter jurisdiction.

The undersigned begins with a summary of the Court's circumscribed jurisdiction under 8 U.S.C. § 1252.

Section 1252(g) provides that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). Section 1252(g) is a "jurisdiction-stripping 'zipper clause,'" which "channel[s] review of all 'decisions and actions leading up to or consequent upon final orders of deportation' in the courts of appeal, following issuance of an order of removal." *Mukantagara v. DHS*, 67 F.4th 1113, 1115 (10th Cir. 2023) (quoting *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482-85 (1999)).

Section 1252(g) is to be read narrowly, *Reno*, 525 U.S. at 482, and it does not cover "all claims arising from deportation proceedings" or impose "a general jurisdictional limitation." *Id.* Instead, it "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Id.* Further, the

Supreme Court has noted that it is "implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.*

The undersigned is not persuaded § 1252(g) restricts review of Petitioner's procedural due process claim. "[C]laims that clearly are included within the definition of 'arising from' . . . [are] those claims connected *directly and immediately* with a 'decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders.'" *Namgyal Tsering v. ICE*, 403 F. App'x 339, 343 (10th Cir. 2010) (quoting *Humphries v. Various Fed. USINS Emp.*, 164 F.3d 936, 943 (5th Cir.1999)).

Petitioner does not ask the Court to review the Attorney General's decision to execute the order of removal, which would be improper. Instead, he challenges the post-removal process he has been afforded, specifically, "a lack of meaningful opportunity to challenge removal to a third country where [he] fear[s] torture." Doc. 1, at 11. Petitioner received a final order of removal on January 19, 2012. Doc. 8, at 3 & Ex. 1, at 1. On October 11, 2024, Respondents reinstated his prior removal order. *Id.* & Ex. 2, at 3. Petitioner challenges neither of those decisions. Instead, Petitioner challenges the process (or alleged lack of process) Respondents have afforded him after Respondents reinstated the order of removal.

Likewise, the undersigned is not persuaded that 8 U.S.C. § §1252(a)(5) and (b)(9) bar the Court from hearing Petitioner's procedural due process claim. Section 1252(a)(5) provides that "a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) provides another bar to judicial review, specifically for "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 from the United States" "[e]xcept as otherwise provided in this section." *Id.* § 1252(b)(9).

Where a Petitioner is not "asking for review of an order of removal," "challenging the decision to detain them in the first place or seek removal," or "challenging any part of the process by which their removability will be determined," § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019). Here, Petitioner is not asking the Court to review the order of removal itself, as explained above, and the Court applies the same reasoning in finding that § 1252(a)(5) does not bar jurisdictional review. *See Riley v. Bondi*, 145 S. Ct. 2190, 2199 (2025) (distinguishing between the finality of a removal order and subsequent withholding proceedings).

2. Petitioner has failed to show a procedural due process violation.

Generally, "when facing deportation . . . aliens are entitled to procedural due process, which provides an opportunity to be heard at a meaningful time and in a meaningful manner." *Torres de la Cruz v. Maurer*, 483 F.3d 1013, 1020 (10th Cir. 2007) (internal quotation marks omitted). Here, Petitioner asserts that he is entitled to notice of the country Respondents are removing him to so that he has the "opportunity to file a protection-based claim" as he "fears deportation to other countries where the Mara Salvatrucha [have] deep ties." Doc. 1, at 18.

a. Statutory and regulatory framework.

ICE may issue administrative removal orders to individuals whom ICE determines are not lawful permanent residents and who have an aggravated felony conviction. *See* 8 U.S.C. § 1228(b); 8 C.F.R. § 238.1. The Attorney General also may reinstate a prior order of removal for an alien upon a finding that the alien "has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal." 8 U.S.C. § 1231(a)(5). When a removal order is reinstated, the "prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." *Id.*

Aliens may still seek protection through withholding of removal under 8 U.S.C. § 1231(b)(3)(A) and deferral of removal for CAT protections, 8 C.F.R. § 1240.11(c)(1). If the alien demonstrates a reasonable fear of persecution or torture, the alien is placed in "withholding-only proceedings" before an IJ where they can only seek withholding of removal and/or CAT protection. 8 C.F.R. §§ 208.31(b), (e); *see also* 8 U.S.C. § 1231(a)(5) (providing that an alien subject to reinstatement "is not eligible and may not apply for any relief under [the Immigration and Nationality Act ("INA")]"); 8 C.F.R. § 1208.2(c)(3)(i) ("The scope of review in [withholding-only] proceedings . . . shall be limited to a determination of whether the alien is eligible for withholding or deferral of removal.").

"An important difference between withholding of removal and deferral of removal is the ease in which the deferral may be terminated." *Turkson v. Holder*, 667 F.3d 523, 525 n.1 (4th Cir. 2012). "To terminate withholding of removal, the government must move to reopen the case, meet the standards for reopening, and establish by a preponderance of the evidence that the alien is no longer eligible for withholding." *Id.* "In contrast, the regulations provide a streamlined termination process for deferral of removal." *Id.* Most importantly for the purposes of Petitioner's case, deferral of removal applies "only to the country in which it has been determined that the alien is likely to

be tortured, and . . . the alien may be removed at any time to another country where he . . . is not likely to be tortured." 8 C.F.R. § 208.17(b)(2).

The Attorney General may remove the alien to any "country whose government will accept the alien into that country." 8 U.S.C. § 1231(b)(2)(E)(vii). Still, the Attorney General "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1231(b)(3)(A).

Finally, 8 C.F.R. § 1208.31(g) governs *reinstated* removal orders and expressly requires expedited IJ review of negative reasonable fear determinations.

b. Petitioner may be removed to Mexico.

Petitioner was granted deferral of removal under CAT to Honduras. Doc. 1, at 7; *see e.g.*, Doc. 8, Ex. 4. In his petition, Petitioner challenges removal to any third country as he has not had the opportunity to demonstrate whether he has a fear of persecution or torture in that country. Doc. 1, at 10. On October

20, 2025, Respondents notified Petitioner of their plan to remove him to Mexico on October 28, 2025, or October 29, 2025.[6] Doc. 8, at 5, 9.

"In the enforcement of [immigration] policies, the Executive Branch of the Government must respect the procedural safeguards of due process." *Galvan v. Press*, 347 U.S. 522, 531 (1954). The undersigned notes that the Court is without jurisdiction to review the Attorney General's decision to select Mexico as the country for removal. *See* 8 U.S.C. § 1252(g).

An individual subject to reinstated removal orders may not apply for asylum relief, *see id.* § 1231(a)(5), but if that individual expresses fear of returning to the country designated in that order, the person "shall be immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture." 8 C.F.R. § 241.8(e). Here, Respondents have stated that ICE conducted a reasonable fear interview after reinstating the prior order of removal. Doc. 8, Ex. 2, at 3. He was placed in withholding only proceedings and an IJ granted his application for deferral of removal pursuant to CAT. *Id.* ICE complied with its regulations designed to protect Petitioner's procedural due process rights.

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6 The undersigned notes that Deportation Officer McNary's declaration is somewhat contradictory regarding when Petitioner will be removed. He states that the earliest possible date for Petitioner's removal to Mexico is October 28, 2025, but also that "[Petitioner] will be removed to Mexico on or before October 29, 2025." Doc. 8, Ex. 2, at 4.

Petitioner argues that he should be entitled to essentially start the process over and apply for deferral of removal to any designated third country because an IJ might determine that Respondents cannot remove him to that country for fear of torture or persecution. But Petitioner "misunderstand[s] the nature of withholding-only proceedings." *Johnson v. Guzman Chavez*, 594 U.S. 523, 535-36 (2021). "When an alien applies for withholding-only relief, he does so as to a particular country"—the country designated in the final order of removal. *Id.* "[B]ecause withholding of removal is a form of 'country specific' relief, nothing prevents [ICE] 'from removing [the] alien to a third country other than the country to which removal has been withheld or deferred." *Id.* at 531-32 (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 (1987), then quoting 8 U.S.C. §§ 208.16(f), 1208.16(f)).

Additionally, Petitioner has been removed from the United States on two separate occasions pursuant to an existing final order of removal. *See* Doc. 8, Ex. 1, at 1-2. Given Petitioner's prior 2017 removal to Mexico, Petitioner cannot claim to be unaware of the possibility of being removed again to Mexico. *See Zayed v. Gonzales,* 139 F. App'x 689, 692 (6th Cir. 2005) (holding, last-minute designation of Jordan, rather than Israel, as country of removal by IJ did not violate alien's due process rights as he "had reason to be aware that Jordan might be designated as the country of removal" as document charging him with

removal stated he was a citizen of Jordan and he previously "claimed to be a Jordanian citizen"). And the Court cannot review the Attorney General's determination under 8 U.S.C. § 1231(b)(3)(A) that Petitioner will not face persecution in Mexico. *See, e.g., Reno,* 525 U.S. at 485 & n.9 (noting that 8 U.S.C. § 1252(g) is "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion" and is "clearly designed to give some measure of protection to . . . discretionary determinations").

The undersigned finds Petitioner's allegations do not reflect a deprivation of procedural due process, and he is not entitled to habeas relief on this claim.

3. Petitioner's continued detention is not unlawful under 8 U.S.C. § 1231(a) and does not violate his substantive due process rights.

Petitioner's substantive due process claim is intertwined with his challenge to his continued detention under 8 U.S.C. § 1231(a), so the undersigned addresses the claims together. Throughout his Petition, Petitioner repeatedly asserts that his removal is not reasonably foreseeable. *See* Doc. 1, at 3, 15-17. The undersigned disagrees.

Petitioner has not made, nor can he make the necessary showings to be entitled to relief under *Zadvydas*. Though Petitioner's detention has extended well beyond the presumptively reasonable six-month period, Petitioner has

failed to meet the second part of the *Zadvydas* test as he has not alleged sufficient evidence to establish "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701.

Petitioner states that he has not received notice of removal to a third country, so removal is not reasonably foreseeable. According to Deportation Officer McNary, on October 20, 2025, ICE served Petitioner "with a document informing him that ICE intends to remove him to Mexico." Doc. 8, Ex. 2, at 4.[7] He also states that "Mexico has agreed to accept the return of aliens from Honduras, among other countries." *Id.* And Petitioner has previously been removed to Mexico. Doc. 8, at 3 & Ex. 2, at 2. Thus, Petitioner has wholly failed to support his conclusory assertions that his removal is not reasonably foreseeable.

Further, in relying on *Zadvydas*, Petitioner reads the decision too broadly, overlooking key factual context that readily distinguishes his case. The *Zadvydas* petitioners were ordered removed from the United States and detained pending execution of their removal. 533 U.S. at 684-86. But, unlike here, there, the government was unable to remove the petitioners within the

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[7] The undersigned notes that Petitioner filed his petition on September 30, 2025. However, he has still received notice of the designated third country of removal.

normal ninety-day removal period because it could not identify any countries willing to accept them, *id.*, leaving the petitioners in what the Supreme Court later characterized as a "removable-but-unremovable limbo." *Jama v. ICE*, 543 U.S. 335, 347 (2005). With nowhere to send them, the government simply continued to hold the petitioners in detention, with no plans to release them. *Zadvydas*, 533 U.S. at 684-86. In that respect, the petitioners' detention was "not limited, but potentially permanent." *Id.* at 691. It was the possibility of "indefinite, perhaps permanent, detention" that led the Court to read an implicit reasonable-time limitation into § 1231. *Id.* at 699.

Petitioner bases his second-prong *Zadvydas* argument on the lack of notice or opportunity to claim a fear of return to the designated third country. Doc. 1, at 15. Although Respondents state Petitioner will be removed/deported within a relatively short turnaround period, Petitioner has now received notice that he will be returned to Mexico, a country to which he was previously removed.

Petitioner's detention is not the type of indefinite and potentially permanent detention at issue in *Zadvydas*. The record shows that before designating Mexico as the third country for removal, Respondents attempted to remove Petitioner to Canada, Belize, and Guatemala in May of 2025, but these countries denied these requests. Doc. 8, Ex. 2, at 3. And Petitioner

received the required 180-day custody review determination under 8 C.F.R. § 241.4, which resulted in Respondents' decision to prolong his detention, citing his criminal history and likelihood of removal. *Id.* at 4.

Under these circumstances, the undersigned finds Petitioner has failed to sustain his burden under *Zadvydas* to show that his removal to Mexico is significantly unlikely in the reasonably foreseeable future. *Komlanvi v. Sessions*, 2018 WL 3348886, at *2 (S.D. Tex. July 9, 2018) (denying habeas relief because the petitioner, who had been in ICE detention for over one year following final removal order, had not "met his initial burden of showing that there is no significant likelihood of removal in the foreseeable future because exhibits attached to the Petition reflect that immigration officials are working with the government of Togo to procure the necessary travel documents").

V. Recommendation and notice of right to object.

For the reasons set forth above, the undersigned recommends the Court deny the petition for habeas relief. Doc. 1. The undersigned additionally recommends that the Court order Respondents within three days of adoption of this Report & Recommendation to submit a declaration in accordance with 28 U.S.C. § 1746 that Petitioner was removed to Mexico.

The undersigned advises the parties of their right to file an objection to this Report and Recommendation with the Clerk of this Court on or before

November 4, 2025, in accordance with 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2).[8] The undersigned further advises Petitioner that failure to make a timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal questions contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in this matter.

ENTERED this 28th day of October, 2025.

SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE

[8] Given the expedited nature of these proceedings, the undersigned has reduced the typical objection time to this Report and Recommendation to seven days. *See* Fed. R. Civ. P. 72(b)(2) advisory committee's note to 1983 addition (noting that rule establishing 14-day response time "does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28."); *see also Whitmore v. Parker*, 484 F. App'x 227, 231, 231 n.2 (10th Cir. 2012) (noting that "[t]he Rules Governing § 2254 Cases may be applied discretionarily to habeas petitions under § 2241" and that "while the Federal Rules of Civil Procedure may be applied in habeas proceedings, they need not be in every instance – particularly where strict application would undermine the habeas review process").