IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JOSE ERALAND JIMENEZ CHACON,

Petitioner,

v. No. 2:25-cv-00977-DHU-KBM

TODD LYONS, Acting Director Immigration and Customs Enforcement; DORA CASTRO, Warden of the Otero Processing Center, MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Washington Field Office; KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; PAM BONDI, in her official capacity as Attorney General of the United States,

Respondents.

MOTION TO DISMISS
PETITION FOR A WRIT OF HABEAS CORPUS

I. INTRODUCTION

Respondents, Immigration and Customs Enforcement ("ICE"), and the Department of Homeland Security ("DHS") (collectively "Respondents"),[1] hereby submit this Response to the Petition for a Writ of Habeas Corpus (Doc. 1).

Petitioner is a noncitizen of the United States and national of Mexico with a prior felony conviction from Colorado for drug trafficking who is currently detained at the Otero County Processing Center in southern New Mexico pursuant to 8 U.S.C. § 1231. Petitioner alleges that his

[1] The undersigned does not represent Dora Castro, Warden, Otero Processing Center, as that is a private facility, and Warden Castro is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Castro, as she is detaining the Petitioner at the request of the United States.

order of supervision was improperly revoked, and that his detention violates the Due Process Clause of the Fifth Amendment because his removal is not reasonably foreseeable.

Respondents dispute key facts in the Petition that are dispositive on the issue of whether habeas relief is available. In short, Respondents facts reveal that Petitioner, through prior counsel, voluntarily withdrew his deferred removal to Mexico under the Convention Against Torture ("CAT"), which meant his removal order to Mexico was reactivated. DHS took steps to remove Petitioner, but Petitioner changed his mind and appealed the removal order he requested, citing new information. Petitioner's removal is now stayed while the appeal is pending. The Petition, on the other hand, alleges that the CAT deferral is still active—a position that Respondents dispute.

However, under either scenario—an active removal order or a CAT deferral—the Court should dismiss the Petition because (1) the Court lacks jurisdiction to review a removal order, (2) Respondents did not violate a statutory or regulatory procedure, (3) there is no due process violation, and (4) Petitioner failed to exhaust his administrative remedies.

II. FACTUAL BACKGROUND

Petitioner is a Mexican citizen born in Mexico to Mexican parents. *See* Declaration, Attached as Ex. 1, at ¶ 6. On May 7, 1999, Petitioner entered the United States in El Paso, Texas using a Border Crossing Card. *Id.* On or about May 2, 2006, he adjusted to legal permanent resident status. *Id.* In 2012, Petitioner was convicted in Colorado state court of Racketeering, Marijuana-Conspiracy-Over 100lbs, and Marijuana Distribution-Over 100lbs, and sentenced to a period of incarceration in the Colorado Department of Corrections. *Id.* at ¶ 7.

On February 16, 2016, Petitioner was released to ICE custody and issued a notice to appear charging him as removable under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act (INA) because he was convicted of a qualifying aggravated felony, i.e., a drug trafficking crime.

Id. at ¶ 8. On May 26, 2016, an immigration judge ordered Petitioner removed to Mexico. *Id.* at ¶ 9. Petitioner was granted deferral of removal under CAT. *Id.* DHS timely appealed to the Board of Immigration Appeals ("BIA"). *Id.* On October 12, 2016, BIA remanded the case back to the immigration judge. *Id.* at ¶ 10. On November 2, 2016, the immigration judge ordered Petitioner removed to Mexico but granted a deferral under CAT. *Id.* at ¶ 11. DHS did not appeal.

In late 2016, after several third countries declined to accept Petitioner, he was released on an order of supervision, moved to El Paso, and was required to report continuously to ICE. *Id.* at ¶¶ 12-14. On March 1, 2023, Petitioner failed to report to his ICE appointment, which violated a condition in his order of supervised release. *Id.* at ¶ 15. Petitioner last reported to ICE over three years ago, on September 26, 2022. *Id.*

On February 14, 2025, Petitioner was arrested by Border Patrol near Alamogordo, New Mexico, for failing to report to an immigration officer as instructed. *Id.* at ¶ 16. On February 15, 2025, DHS issued a Notice to Appear. *See* Ex. 2, Notice to Appear, at 1. In the next few months, DHS requested several third countries accept Petitioner, but the requests were denied. Doc. 1 at ¶¶ 20-24, 26, 29. On May 14, 2025, DHS continued Petitioner's detention because he was deemed a flight risk; he was served the decision. *Id.* at ¶ 28. On June 27, 2025—approximately four-and-a-half months after his arrest—Petitioner's prior counsel requested to drop the CAT deferral. *Id.* at ¶ 30.

On August 7, 2025, Petitioner's prior counsel filed a motion to reopen his case and terminate the withholding grant. *Id.* at ¶ 31. On August 11, 2025, Petitioner applied for a stay of removal, stating that he plans to challenge his Colorado conviction because he was not advised of the immigration consequences of his plea. *Id.* at ¶ 32. Petitioner filed a motion to withdraw the

motion to reopen his case and terminate CAT protection.[2] On August 19, 2025, DHS decided to continue detention, determining that Petitioner was a flight risk and public risk due to his felony trafficking convictions. *Id.* at ¶ 37.

On or about September 17, 2025, the immigration judge reopened the removal proceedings and granted Petitioner's request to terminate his CAT deferral to Mexico, which reactivated the order of removal to Mexico. *See* Order of the Immigration Judge, attached as Ex. 3, at 1 ("[H]is order of removal to Mexico stands."). On or about September 29, 2025, Petitioner filed an appeal with the BIA, which is pending. *Id.* at ¶ 40. Respondents are not aware of the status of the motion to withdraw the motion to reopen the case and terminate CAT protection. On October 1, 2025, ICE ran checks for wants or warrants to prepare for Petitioner's removal to Mexico but, later that day, removed him from the list given his pending appeal with the BIA. *Id.* at ¶¶ 41,42.

III. LEGAL STANDARDS

A. Statutory Framework for Detention and Removal.

A removable noncitizen may be detained during his removal proceedings and after he receive an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. "An alien is not adjudged deportable until an order enters concluding that the alien is deportable or ordering deportation, and such an order is not final until affirmed by the Board of Immigration Appeals or until the time expires for seeking review." *Demore v. Kim*, 538 U.S. 510, 542 (2003) (internal quotation omitted).

Once a noncitizen becomes subject to an administratively final removal order, the authority for his detention shifts to § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021).

[2] Petitioner's counsel informed Respondents of this motion during email communications. However, this information is not included in the Declaration, and Respondents cannot attest to its accuracy at the time of filing.

Section 1231 establishes a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following: (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, or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

Under 8 U.S.C. § 1231, the Attorney General is required to detain noncitizens subject to such removal orders throughout the 90-day removal period. 8 U.S.C. § 1231(a)(1)–(2). Subsequently, a noncitizen ordered removed and determined by the Attorney General to be a "risk to the community or unlikely to comply with the order of removal, may be detained beyond the [90-day] removal period." 8 U.S.C. § 1231(a)(2), (6); 8 C.F.R. § 241.4(a)(1), (4).

In *Zadvydas v. Davis*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit a noncitizen's detention beyond the removal period to the period "reasonably necessary to bring about the alien's removal from the U.S." 533 U.S. 678, 689 (2001). The Court held that a period of six months from the date the removal order becomes final is presumptively reasonable. *Id.* at 701. But the Supreme Court cautioned that the "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 695. "To 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." *Id.*

A noncitizen may be ordered removed to a third country, i.e., a country with which he has no immediate connection, that will accept him. 8 U.S.C. § 1231(b)(2)I(vii). The noncitizen may challenge the order when DHS identifies the third country. *See Doe v. Becerra*, 2023 WL 218967,

at *4 (N.D. Cal Jan. 17, 2023). A challenge before DHS's third country designation is speculative and therefore not ripe for adjudication. *See id.*

B. Regulatory Framework for Detention and Removal.

i. Final Orders of Removal.

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal. Specifically, 8 C.F.R. § 241.4 is entitled "Continued detention of inadmissible, criminal, and other aliens [noncitizens] beyond the removal period" and relates to the release and the revocation of release of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole to a noncitizen, and the agency may continue a noncitizen's custody under the provisions of the C.F.R. 8 C.F.R. § 241.4(a).

Revocation of release is governed by 8 C.F.R. § 241.4(l). This can occur for two reasons: the noncitizen violates the conditions of release, § 241.4(l)(l), or ICE determines in its discretion to revoke release, § 241.4(l)(2). If release is revoked due to a violation of conditions under § 241.4(l)(1), the noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody. 8 C.F.R. § 241.4(l)(1). The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. 8 C.F.R. § 241.4(l)(2).

ii. Withholding of Removal Under CAT.

A noncitizen can obtain an order withholding or deferring removal under CAT when his removal would likely result in torture. 8 C.F.R. §§ 1208.16, 1208.17. A removal order and grant of relief under CAT becomes final if not appealed. *See Becerra*, 2023 WL 218967, at *1.

iii. Administrative Review When Detention Exceeds Six Months.

After the Supreme Court's decision in *Zadvydas*, the Attorney General issued regulations to implement administrative review procedures for those aliens detained beyond the six month removal period. *See* Continued Detention of Aliens Subject to Final Orders of Removal, codified at 8 C.F.R. § 241.13. The regulation "establishes special review procedures for those aliens who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the removal period, where the alien has provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future." *Id.*

More specifically, the regulations provide that the noncitizen must submit a written request for release asserting why removal is not reasonably foreseeable to the Headquarters Post-Order Detention Unit ("Headquarters" or "HQPDU"); Headquarters must respond in writing; and that the noncitizen may be detained until a final determination is made. *See id.* at § 241.13(b)-(j). DHS will release a noncitizen who has made such a showing, subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release if ICE determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

iv. Exhaustion of Administrative Remedies.

The Tenth Circuit does not appear to have addressed whether exhaustion of administrative remedies is required in the immigration context and, if so, whether failure to exhaust is jurisdictional or prudential, but several district courts have dismissed habeas petitions without prejudice as premature when the Petitioner failed to comply with the procedures in § 241.13. *See Quintana Casillas v. Sessions*, 2017 WL 3088346, at *10 (D. Colo. July 20, 2017) (noting in

recommendation that was not adopted because petitioner voluntarily withdrew the petition that "the immigration agency has provided for administratively determining the very question that Petitioner asks this court to resolve"); *Royer v. Holder*, 2012 WL 6553114, at *3 (M.D. Fla. Dec. 14, 2012) (acknowledging 6.5-month detention but noting that petitioner "does not assert that he has submitted a written request for release to Headquarters or that any determination has been made by Headquarters"); *Meighan v. Chertoff*, 2008 WL 1995374, at *3 (S.D. Tex. May 6, 2008) (noting that petitioner had neither been held in custody for more than 6 month nor had "requested a review of his custody by HQPDU"); *Saykin v. Holder*, 2010 WL 1839413, at *2 (D. Mass. May 5, 2010) (noting that if noncitizen files another habeas petition, he must allege whether he submitted a request to Headquarters and "what action, if any, the government took on such a request or on any other request for custody review"); *Singh v. Gonzales*, 2006 WL 6584615, at *2 (S.D. Tex. Feb. 17, 2006) (directing respondents to "treat the habeas petition filed in this case as a request for release under 8 C.F.R. § 241.13 and 241.4"); *Philius v. Holder*, 2011 WL 5509558, at *3 (N.D. Ohio Nov. 10, 2011) (noting that noncitizen had not been detained for six month and, after that time, "he may file a Petition with the HQPDU requesting release under 8 C.F.R. § 241.13"); *Morena v. Gonzales*, 2005 WL 3307100, at *6, n.10 (M.D. Pa. Oct. 4, 2005) (noting that noncitizen was still within the 6 month period and instructing if he is "unhappy with the results obtained after fully exhausting his administrative remedies, he can file a subsequent habeas petition regarding his continued detention"). Critically, the burden is on the noncitizen to submit a petition to Headquarters. *See* 8 C.F.R. § 241.13(d)(1) ("An eligible alien may submit a written request for release to the HQPDU . . . .").

Similarly, the Tenth Circuit does not appear to have addressed exceptions to the exhaustion requirement in the immigration context. However, the court stated in prisoner habeas cases that

"[a] narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010).

IV. ARGUMENT

A. This Court Lacks Jurisdiction to Review Petitioner's Re-detention for the Purpose of Executing His Removal Order.

8 U.S.C. § 1252(g) strips district courts of jurisdiction over "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 against any alien under this chapter." *See Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (noting that "§ 1252(g)'s jurisdictional bar does not include any temporal caveats"). District courts only have jurisdiction that Congress has provided. *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."). Pursuant to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and the 2005 REAL ID Act, this Court is deprived of jurisdiction over this case. At least two circuits have held that 8 U.S.C. § 1252(g) strips district courts of jurisdiction over habeas claims arising from the execution of removal orders, including challenges by noncitizens re-detained for removal. *See Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (explaining that "the discretion to decide whether to execute a removal order includes the discretion to decide when to do it"); *see also E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021) ("Section 1252(g) precludes judicial review of any challenge to the decision or action by [DHS] to execute removal orders") (alterations and quotations omitted).

In *Tazu*, the court noted that § 1252(g) by its text stripped the court of jurisdiction to review the Attorney General's decision or action to execute a removal order. *Id*. The petitioner's re-detention for a three-day period was "simply the enforcement mechanism the Attorney General

picked to execute his removal," and § 1252(g) thus "funnel[ed] review away from the District Court." *Id*. So too here. District courts in other circuits have agreed. *See Westley v. Harper*, 2025 WL 592788, at *6 (E.D. La. Feb. 24, 2025) ("Because this Court has determined that all of Petitioner's claims arise from the decision to execute a removal order, it lacks jurisdiction to entertain them under any provision cited by Petitioner."); *Najera v. Sessions*, 2018 WL 11447065, at *3 (D. Ariz. May 15, 2018) ("The decision to revoke Petitioner's order of supervision arose from the decision to execute the removal order. Respondents' revocation decision, therefore, is outside the scope of this Court's review.") (quotations and alterations omitted).

Likewise, 8 U.S.C. § 1252(b)(9) states that if a claim "aris[es] from any action taken or proceeding brought to remove an alien," then review of the claim "shall be available only in judicial review of a final order." *See Tazu*, 975 F.3d at 299. Re-detaining a noncitizen for purposes of removal constitutes an enforcement mechanism of a removal order, and a district court lacks jurisdiction to hear it. *Id*. (noting § 1252(b)(9) does not foreclose all claims by an immigration detainee, such as the length of his confinement).

Here, Petitioner, through prior counsel, requested to reopen his removal proceedings and terminate his withholding under CAT, and the motion was granted. Therefore, he is detained for the purpose of executing his removal order. Petitioner's removal is on hold because he filed an appeal of the order he requested with the BIA, but he is currently held in custody pending removal. This falls squarely within the purview of § 1252(g). For this reason, the Court lacks jurisdiction to consider his challenge.

B. Respondents Did Not Violate Statutes or Regulations.

i. The Court Lacks Jurisdiction to Review the Claim.

Petitioner alleges that the government failed to comply with the procedures to revoke an order of supervision and advances two arguments about the revocation: (1) it was arbitrary and unlawful, and (2) it violated due process. Doc. 1 at 2, 12, 21. The first allegation—that "regulations enacted by the government itself are intended to ensure that noncitizens who have been released on supervision do not arbitrarily have that supervision revoked," *id.* at 21—is more properly characterized as a violation of the Administrative Procedures Act ("APA").

As an initial matter, this Court lacks jurisdiction to consider this claim. The APA permits judicial review for "[a] person suffering legal wrong because of agency action," 5 U.S.C. § 702, and provides that an agency action is reviewable if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* at § 706(2)(A). However, the APA explicitly excludes any such review "to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." *Id*. § 701(a)(1)–(2). Petitioner's APA challenge to ICE's discretionary decision to revoke his supervision fails under the first clause of § 701(a)(1) because the Court is deprived of subject matter jurisdiction by virtue of 8 U.S.C. § 1252(a)(2)(B)(ii). *See, e.g.*, *Bernardo ex rel. M&K Eng'g, Inc. v. Johnson*, 814 F.3d 481, 485 (1st Cir. 2016) (holding that the judicial review bar at § 1252(a)(2)(B)(ii) applied as a result of statutory terms suggesting a grant of administrative discretion).

Petitioner's action also fails under the second clause of § 701(a) because the INA and relevant regulations make clear that revocation of supervised release is within the agency's discretion. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2). Indeed, courts that have considered habeas challenges to post-removal-order orders of supervision have afforded administrative authorities "wide latitude" to impose such orders. *See, e.g., Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 528 (S.D.N.Y. 2009) (citing cases). Accordingly, to the extent that Petitioner challenges

the substance of ICE's discretionary decision regarding his order of supervision (i.e., to revoke it and re-detain him), the Court should decline to consider such challenge, as it lies squarely within the discretion of the agency.

The regulatory provision applicable to revocation of Petitioner's release is 8 C.F.R. § 241.4. This regulation sets forth two provisions for the revocation of release: § 241.4(l)(1), where revocation is a result of a violation of some condition of the release, and § 241.4(l)(2), where revocation is at the discretion of ICE, including when appropriate to enforce a removal order against an alien.

While § 241.4(l)(1) states that "[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," § 241.4(l)(2) contains no such language. Further, the requirements for a notice appear are minimal—even "[a] defective notice to appear . . . does not deprive an immigration court of subject matter jurisdiction." *United States v. Avila Flores*, 2019 WL 1756532, at *2 (E.D. Va. Apr. 19, 2019).

To the extent Petitioner contends that he should have received prior notice of the revocation of his release, no regulation or statute requires such prior notice. Thus, ICE has complied with the relevant regulations governing the revocation of release, and Petitioner fails to establish any APA claim.

ii. Even if the Court has jurisdiction, there is no violation.

Petitioner argues that he was in "full compliance" with the order of supervision, and that DHS has not provided a justification for revocation. Doc. 1 at 13. However, this is incorrect. First, Petitioner violated his order of supervision by failing to check in. Second, in June 2025, only four months into his detention, Petitioner, through prior counsel, requested to drop the CAT

withholding, which made the prior order of removal to Mexico controlling. As of today, Petitioner has a valid order of removal, though Petitioner appears to have changed his mind in a subsequent filing. Petitioner's status is now much simpler—he has a valid order of removal to Mexico; has appealed the order; and is awaiting a decision from the BIA. Habeas relief is not available in this procedural posture because it would be premature. *See Bogle v. Dubois*, 236 F. Supp. 3d 820, 823 (S.D.N.Y. 2017) ("The proper procedure is to seek relief from the BIA and then, if the IJ is affirmed, file a habeas petition.")

C. Petitioner's Due Process Rights Were Not Violated by His Re-detention Pending Removal.

Petitioner argues that the government's revocation of his order of supervision also violates due process. Doc. 1 at 15. Petitioner is detained under 8 U.S.C. § 1231(a)(6), which "governs the detention, release, and removal of individuals 'ordered removed.'" *Johnson v. Arteaga-Martinez*, 142 S. Ct. 183, 1832 (2022) (quoting 8 U.S.C. § 1231(a)(1)(A)). As noted above, "[a]fter the entry of a final order of removal against a noncitizen, the Government generally must secure the noncitizen's removal during a 90-day 'removal period.'" *Id.* (citing 8 U.S.C. § 1231(a)(1)(A)). Detention is mandatory during the 90-day removal period. 8 U.S.C. § 1231(a)(2). *Zadvydas* recognized a "presumptively reasonable" removal period of six months. *Id.* "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* "To 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." *Id.*

Thus, it is a petitioner's burden to show—after the presumptively constitutional six-month period elapses—that his detention has "become prolonged and potentially unlawful," and specifically that there is "'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Grant v. Warden of Clinton Cnty. Corr. Facility*, 2022 WL

3045842, at *3 (M.D. Pa. Aug. 2, 2022) (quoting *Johnson v. Guzman Chavez*, 594 U.S. 2271, 2282 (2021)); *Francis S.M. v. Decker*, 2020 WL 1956053, at *4 (D.N.J. Apr. 23, 2020) (quoting *Alexander v. Att'y Gen.*, 495 F. App'x 274, 276 (3d Cir. 2012)). When a noncitizen cannot "produce evidence demonstrating good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future, courts have sustained continuing periods of detention pending removal well beyond" the presumptively reasonable six-month period. *Kamara v. Warden*, 2021 WL 1971502, at *9 (M.D. Pa. Apr. 12, 2021) (collecting cases).

Moreover, "an alien cannot simply rely on the passage of time to meet his burden; rather, there must be some indication that the government is either unwilling to remove an alien or there are seemingly insurmountable barriers . . . ." *Gathiru v. Banieke*, 2016 WL 6436621, at *2 (D. Minn. Oct. 27, 2016) (cleaned up). By way of further example, "[c]ourts have found that removal was not 'reasonably foreseeable'" when "no country would accept the detainee, the country of origin refused to issue proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time." *Tshiteya v. Crawford*, 2013 WL 6635096, at *4 (E.D. Va. Dec. 16, 2013) (citing *Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003)).

Here, Petitioner cannot carry his burden of establishing good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future. Petitioner would have already been removed to Mexico but for his 11th hour decision to appeal the very immigration order he requested. Petitioner's removal is not insurmountable or not reasonably foreseeable—his removal was halted only because of his appeal with the BIA.

Moreover, as courts have recognized, 8 C.F.R. § 241.4, the regulation governing post-order custody review of noncitizens detained pursuant to 8 U.S.C. § 1231, satisfies the requirements of

procedural due process. *See, e.g.*, *Boachie-Danquah v. U.S. Att'y Gen.*, 2018 WL 868769, at *4 (S.D. Ohio Aug. 24, 2017) ("the post-order custody review satisfies due process requirements"); *Boamah v. United States*, 2017 WL 6016640, at *3 (S.D. Ohio Aug. 24, 2017), *supplemented* 2017 WL 6015809 (S.D. Ohio Sept. 5, 2017 (same); *Odogwu v. Holder*, 2011 WL 846145, at *3 (M.D. Pa. Feb. 15, 2011) (same).

Consistent with § 241.4, Petitioner has received multiple custody reviews during his current detention, which determined he was a threat to public safety. By conducting the periodic custody reviews required under 8 C.F.R. § 241.4, ICE has further protected Petitioner's liberty interest, undermining his due process claim. For all these reasons, Petitioner's due process challenge to his detention fails.

D. Petitioner Failed to Exhaust Administrative Remedies.

Because Petitioner failed to complete the administrative review process required by § 241.13, this Court, as a prudential matter, should decline to rule on the petition as premature and dismiss it without prejudice. Section 241.13 provides that Headquarters—not a court and not an immigration judge—should hear the very question Petitioner raises. At least seven district courts have reached a similar result based on a petitioner's failure to exhaust administrative remedies. *See Supra* Section III.B.iv. Some of the Courts simply dismissed the petition. *See, e.g.*, *Meighan*, 2008 WL 1995374, at *3. Other courts have added requirements to help advance the administrative appeal while also ensuring that subsequent petitions comply with § 241.13. For example, in *Quintana Casillas*, the magistrate recommended requiring that respondents "treat the petition as a request for HQPDU review under 8 C.F.R. § 241.13." 2017 WL 3088346, at *11. And in *Saykin*, the Court required that any subsequent petition specify whether the petitioner submitted his administrative claim to Headquarters. 2010 WL 1839413, at *2. Here, Petitioner does not allege

that he submitted a request to Headquarters for review—which is his burden to submit under 8 C.F.R. § 241.13(d)(1)—so he is ineligible for habeas relief.

Finally, even if the Court concludes that the futility exception applies in immigration cases, the futility exception does not apply here because Petitioner has no basis to claim—and has not claimed—that the appeal has a predetermined outcome. In other words, Petitioner has not argued that submitting a claim would be fruitless. The Court should dismiss the petition and, if it believes more guidance is necessary, order that the petition be treated as a request for Headquarters review under § 241.13.

E. The Court Should Not Order Petitioner's Immediate Release.

Petitioner's request for immediate release should be denied because it is contrary to the law governing immigration habeas proceedings. For example, in the context of noncitizens detained under § 1226(c), courts have repeatedly held that they lack authority to order a mandatory detainee's release pending conclusion of his immigration proceedings. *See generally Nyamekye v. Oddo*, 2023 WL 9271844, at *5 (W.D. Pa. Mar. 28, 2023) (denying request for immediate release and noting lack of authority to support such a request). Further, Section 1231(a) does not provide for a bond hearing for the noncitizen to challenge his detention. *Guzman Chavez*, 594 U.S. at 526; *see also, e.g., Johnson v. Arteaga-Martinez*, 596 U.S. 573, 581 (2022) (rejecting argument that § 1231(a)(6) "require[s] an initial bond hearing" "at the outset of detention").

F. The Court is Without Jurisdiction to Enjoin Petitioner's Transfer.

The Court lacks jurisdiction to grant Petitioner's request to enjoin his transfer from the Otero County Detention Center and should deny the same. *See, e.g.*, *Edison v. Decker*, 2021 WL 1997386, at *6 (D.N.J. May 19, 2021) ("[I]t is extremely doubtful that this Court has jurisdiction to enjoin [petitioner's] transfer in this habeas matter.") (citing cases). Even if the Court has

jurisdiction to prevent Petitioner's transfer, it should decline to enjoin transfer because the Court retains jurisdiction, regardless of the petitioner's location. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) ("[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.").

G. The Court is Without Jurisdiction to Order Additional Procedures Before Removal to A Third County.

Finally, Petitioner requests that he "be provided notice and an opportunity to request protection from removal to any third country that Respondents may identify." Doc. 1 at 24. Given that Petitioner's BIA appeal is pending, and DHS has not otherwise identified a third country, this request is speculative and not ripe for review. *See Becerra*, 2023 WL 218967, at *4 ("To the extent that Petitioner is concerned about his ability to challenge his removal to a third country, should one be identified . . . such a claim is not yet ripe, because DHS has identified no such third country."). This request also unnecessarily circumvents agency procedure, which provides Petitioner a means of appealing his removal with notice and a hearing. *See* 8 U.S.C. § 1231(b)(3)(A) (stating that the Attorney General may not remove an alien to a country if he or she determines it would threaten the alien's life or freedom for listed reasons); *see also Aden v. Nielsen*, 409 F. Supp. 3d 998, 1010 (9th Cir. 2019) ("The guarantee of due process includes the right to a full and fair hearing, an impartial decisionmaker, and evaluation of the merits of his or her particular claim."). Petitioner is not requesting a temporary restraining order to protect him from the immediate harm of a removal. Instead, Petitioner styled this claim as if there is an active case or controversy—which there is not. The government has a significant interest in avoiding these extra-regulatory burdens.

V. CONCLUSION

For the reasons stated, including that the Court lacks jurisdiction to review a removal order, Respondents did not violate a statute, regulation, or due process, and Petitioner failed to exhaust his administrative remedies, the Court should deny the Petition.

Petitioner opposes this motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following pro se party to be served by first-class postal mail as more fully reflected on the Notice of Electronic Filing:

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