

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-03307-RMR

HUMBERTO ROMEU-PEREZ,

Petitioner,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
ROBERT HAGAN, Field Office Director, U.S. Immigration and Customs Enforcement,
and
JUAN BALTAZAR, Warden, Aurora Detention Center,
in their official capacities,

Respondents.

CONSOLIDATED RESPONSE TO PETITIONER'S AMENDED PETITION (ECF No. 22) AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER (ECF Nos. 16 & 17)

Respondents submit this Response to Petitioner's Amended Petition for Writ of Habeas Corpus (ECF No. 22) ("the Amended Petition") and Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No. 17) ("the Motion"). As explained further below, the Court should deny the Amended Petition and the Motion.

The claims in the Amended Petition—which challenge the procedures being used to remove Petitioner to a third country—are not cognizable in a habeas action, and thus the Court lacks subject matter jurisdiction. Those claims would also need to be raised in an ongoing certified non-opt-out nationwide class action on the same issue. And,

regardless, Petitioner has not established a due-process violation that would warrant his release from the custody of Immigration and Customs Enforcement (“ICE”).

The Motion also asserts that Petitioner’s ongoing detention violates his due process rights as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because he has been detained beyond the presumptively constitutional six-month period. That claim is not asserted in the Amended Petition, and it fails because he asserted that claim in an emergency motion in which he stated that he was going to be removed that same day.

FACTUAL BACKGROUND

Petitioner’s admission to the United States. Petitioner is a native and citizen of Cuba. See Ex. A, Declaration of Raymundo Lascano III (January 6, 2026) ¶ 4. On October 28, 1994, Petitioner was admitted to the United States as a lawful permanent resident. *Id.* ¶ 5.

Petitioner’s criminal history. On September 15, 2008, Petitioner was convicted on four charges in Florida:

- (1) Lewd and Lascivious Assault on a Child in violation of Fla. Stat. § 800.04 (two counts); and Obscene Material/Protection of Minor in violation of Fla. Stat. § 847.0133 (two counts);
- (2) Engaging in Sexual Activity with Familial Child in violation of Fla. Stat. § 794.011(8)(b);
- (3) Attempted Sexual Battery on a Minor in violation of Fla. Stat. § 794.011 (two counts); Lewd and Lascivious Molestation on a Child Under Age 12 in violation of Fla. Stat. § 800.04(5)(b); and Using a Child in Sexual Performance in violation of Fla. Stat. § 827.071(2);

(4) Lewd and Lascivious Battery on a Child 12-16 Years Old in violation of Fla. Stat. § 800.04(4) (three counts); Lewd and Lascivious Molestation on a Child 12-16 Years Old in violation of Fla. Stat. § 800.04(5)(C) (two counts); Computer Pornography in violation of Fla. Stat. § 847.0135(2); and Promoting Sexual Performance by a Child in violation of Fla. Stat. § 827.071(3).

Id. ¶ 6. Petitioner was sentenced to 15 years imprisonment on each charge with the sentences to run concurrently, and to 10 years of sex offender probation upon release from prison. *Id.* ¶ 7. Based on his criminal convictions, the Department of Homeland Security (“DHS”), ICE determined that Petitioner is removable from the United States.

Id. ¶ 8.

Petitioner’s removal proceedings. On March 13, 2009, ICE issued a Notice to Appear (“NTA”), initiating removal proceedings under 8 U.S.C. § 1229a, before the Executive Office for Immigration Review (“EOIR”). *Id.* ¶ 9. The NTA charged Petitioner with being deportable from the United States pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) (an alien who, at any time after admission, is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined thereof and regardless of whether the convictions were in a single trial) and 8 U.S.C. § 1227(a)(2)(E)(i) (an alien who, at any time after admission, is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment). *Id.*

Order of removal. On June 15, 2009, an Immigration Judge (“IJ”) ordered Petitioner removed from the United States to Cuba. *Id.* ¶ 10. Petitioner did not seek relief from removal. *Id.* ¶ 11.

Petitioner was released from prison on April 16, 2019, and transferred to ICE custody to execute the order of removal. *Id.* ¶ 12.

On April 30, 2019, ICE conducted a Post Order Custody Review (“POCR”) pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 13. ICE determined that it would not continue to detain Petitioner because, at that time, removal to Cuba was impracticable. *Id.* ICE released Petitioner on an order of supervision, which required periodic check-ins with ICE. *Id.*

Petitioner’s detention under § 1231(a) and removal efforts. On June 21, 2025, ICE revoked Petitioner’s release on supervision and arrested and detained him for the purpose of executing his June 15, 2009, final order of removal to Cuba, pursuant to 8 C.F.R. § 241.4(l)(2)(iii). *Id.* ¶ 14.

Petitioner was detained at the Krome Service Processing Center in Miami, Florida from June 21, 2025, through July 5, 2025. *Id.* ¶ 15. On July 6, 2025, Petitioner was transferred to the Denver Contract Detention Facility (“CDF”). *Id.* ¶ 16. On July 9, 2025, Petitioner was transferred to the El Paso Service Processing Center in El Paso, Texas for removal to Mexico. *Id.* ¶ 17. Petitioner was not removed to Mexico and was transferred back to the Denver CDF on July 18, 2025. *Id.* ¶ 18.

On or about July 28, 2025, ICE initiated a request for Petitioner’s travel document from the Cuban government and pursued approval for his removal to Cuba. *Id.* ¶ 19. To date, ICE has not received a response from the Cuban government. *Id.* Because ICE did not receive a response from the Cuban government, it determined that the Cuban

government is unwilling to accept Petitioner for removal. *Id.* ¶ 20. Accordingly, ICE pursued Petitioner's removal to a third country, Mexico, that is willing to accept him for removal. *Id.* ¶ 21. Mexico does not require travel documents for noncitizens nominated for removal from the United States. *Id.* ¶ 22. Rather, ICE nominates noncitizens for removal to Mexico and noncitizens are approved on a case-by-case basis. *Id.*

On August 29, 2025, Petitioner was transferred to the Florence Service Processing Center ("Florence SPC") in Florence, Arizona for removal to Mexico. *Id.* ¶ 23. Petitioner was not removed to Mexico and was transferred back to the Denver CDF on August 31, 2025. *Id.* ¶ 24.

On September 6, 2025, Petitioner was served with a Notice of Removal informing him that he would be removed to Mexico. *Id.* ¶ 25, Attach. 1 (September 6, 2025, Notice of Removal). Petitioner refused to sign the notice. *Id.* He did not claim a fear of removal to Mexico at that time. *Id.*

Petitioner's habeas petition. Petitioner, proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 on October 20, 2025, in the District of Colorado, while he was detained at the Denver CDF. See ECF No. 1. In the Petition, Petitioner alleged a violation of due process under *Zadvydas v. Davis*, 533 U.S. 678 (2001), asserting that his removal was not likely in the foreseeable future since both Cuba and Mexico have refused to accept him, and no other third country has accepted him. *Id.* He sought either a bond hearing or release from ICE custody. ECF No. 1 at 7.

After filing the petition, on November 12, 2025, Petitioner was transferred to

Florence, Arizona for removal to Mexico. *Id.* ¶ 26. Petitioner was not removed to Mexico and was transferred back to the Denver CDF on November 16, 2025. *Id.* ¶ 27.

On November 28, 2025, Petitioner was again transferred to Florence, Arizona for removal to Mexico. *Id.* ¶ 28. On December 3, 2025, Petitioner was transferred to the Port Isabel Service Processing Center in Los Fresnos, Texas for removal to Mexico. *Id.* ¶ 29. The following day, ICE conducted a POCR pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 30. ICE determined that it would continue to detain Petitioner because there is a significant likelihood of his removal in the reasonably foreseeable future. *Id.* Further, ICE determined Petitioner poses a danger to the community. *Id.*

On December 11, 2025, ICE officials notified Petitioner, for a second time, that he would be removed to Mexico and served him with a Notice of Removal. *Id.* ¶ 31. Again, Petitioner refused to sign the Notice. *Id.* The same day, counsel for Petitioner contacted ICE and asserted Petitioner's claim of fear of removal to Mexico. *Id.* ¶ 32. Petitioner was therefore not removed to Mexico. *Id.* A hold was instituted on Petitioner in the ICE system so that he would not be removed from the United States.

Petitioner's Emergency Motion. Also on December 11, 2025, Petitioner's counsel entered his appearance in this action, see ECF No. 15, and filed the Emergency Motion for Temporary Restraining Order, see ECF Nos. 16 & 17, on Petitioner's behalf. In the Motion, Petitioner seeks a temporary restraining order precluding Respondent from removing Petitioner to Mexico pending a reasonable fear interview and adjudication of the claims asserted in the Motion. See ECF Nos. 16 & 17.

Petitioner also stated that he planned to file an amended petition. See ECF No. 16 at 1.

Judge Nina Y. Wang granted in part and reserved in part the Motion. See ECF No. 18 at 3. Judge Wang ordered Respondents not to remove Petitioner “from the United States until and unless this Court or the United States Court of Appeals for the Tenth Circuit” vacates the Order. *Id.* Respondents were also directed to respond to the Motion on or before December 19, 2025.

On December 16, 2025, Petitioner was transferred back to the Denver CDF.

Petitioner’s Amended Petition. On December 17, 2025, Petitioner filed the Amended Petition. See ECF No. 22. In the Amended Petition, Petitioner asserts three claims for relief under 28 U.S.C. § 2241 against Respondents. *Id.* First, Petitioner alleges a violation of the Immigration and Nationality Act, 8 U.S.C. § 1231(b), contending Respondents failed to follow the prescribed framework to remove Petitioner to a third country, Mexico. *Id.* at ¶¶ 44-48. Second, Petitioner alleges a violation of due process under the Fifth Amendment of the United States Constitution, contending Respondents failed to provide Petitioner with a “meaningful opportunity” to raise a fear of removal to Mexico. *Id.* at ¶¶ 49-53. Third, Petitioner alleges a violation of the *Accardi* doctrine, see *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), arguing that Respondents failed to follow regulations (at 8 C.F.R. § 241.4(l)) when Petitioner’s OSUP was revoked on June 21, 2025. *Id.* at ¶¶ 54-63. For a remedy, Petitioner seeks release from ICE custody. *Id.* at 14.

On December 18, 2025, the parties filed a joint motion for entry of a briefing

schedule in this matter. See ECF No. 25. In the joint motion, the parties informed the Court that they had agreed on a proposed schedule for consolidated briefing concerning Petitioner's Amended Petition (ECF No. 22) and Motion (ECF Nos. 16 & 17). The Court granted the joint motion, and Respondents' deadline to file a consolidated response to the Amended Petition and Motion is January 6, 2026, and Petitioner's deadline to file a consolidated reply is January 26, 2026. ECF No. 25 at 2.

Petitioner's fear of removal to Mexico. On December 19, 2025, ICE referred Petitioner to U.S. Citizenship and Immigration Services ("USCIS") for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3), which restricts the removal of a noncitizen to a country where the noncitizen's life or freedom would be threatened based on the noncitizen's race, religion, nationality, membership in a particular social group, or political opinion. Petitioner alleges that he fears removal to Mexico because he believes that he "may be subject" to detention or mistreatment based on his criminal history (child sex assault, among other things) in the United States. ECF No. 17 at 2; *see also* Ex. A ¶¶ 6. On January 2, 2026, USCIS conducted Petitioner's third country screening interview. Ex. A ¶¶ 35. USCIS determined that Petitioner failed to establish that it is more likely than not that he will be persecuted or tortured in Mexico. *Id.* Accordingly, Petitioner is not eligible for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶¶ 36.

ICE is now in the process of nominating Petitioner for removal to Mexico. *Id.* Based on prior efforts to remove Petitioner to Mexico, ICE believes that Petitioner will be accepted for removal. *Id.* ¶¶ 36. Thus, his removal is likely in the reasonably

foreseeable future. *Id.*

ARGUMENT

Petitioner asserts his claims in this action pursuant to 28 U.S.C. § 2241 and seeks release from custody, yet he does not appear to challenge the fact or duration of his confinement. Instead, Petitioner challenges the process concerning his removal to a third country and the process concerning revocation of his OSUP. See ECF No. 22 ¶¶ 44-63; see also ECF No. 17 at 4-5.

Petitioner's claims are not cognizable habeas claims, and thus both the Amended Petition and Motion should be denied. Petitioner would need to assert his claims in an ongoing certified non-opt-out nationwide class action. And even if Petitioner's claims were cognizable habeas claims, he fails to establish any due process violation by Respondents that would warrant his release. Finally, Petitioner fails to establish that he is entitled to a preliminary injunction precluding Respondents from removing him from the United States, and the *Zadvydas* claim that he raises only in that Motion fails.

I. Petitioner's claims challenging his removal to a third country are not cognizable in a habeas action.

First, Petitioner's challenges to the procedures that may be used for his removal to a third country are not cognizable in this habeas proceeding because they are not a challenge to his detention. A habeas proceeding is "at its core a remedy for unlawful executive detention" and cannot be used to bring other challenges. *DHS v.*

Thuraissigiam, 591 U.S. 103, 119 (2020) (quotation omitted). Petitioner's objection to

any procedures that might be used to determine a third country to which he might be removed is not a challenge to his detention.

Second, Petitioner's request for certain procedures to be used for any third country removal is encompassed within the claims already presented in a certified class action pending in the District of Massachusetts, see *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025), and Petitioner must proceed through that suit instead. The *D.V.D.* court certified a non-opt-out class, which includes:

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) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 378, 394.¹

The nature of Petitioner's claims in the Amended Petition—regarding notice and opportunity concerning third country removal—fall squarely within the relief sought in *D.V.D.* See *D.V.D.*, 778 F. Supp. 3d at 368 (“[The plaintiffs] are challenging [d]efendants’ policy or practice of designating aliens for removal to any country other than the country or alternative country of removal designated and identified in writing in their prior immigration proceedings without first providing notice and an opportunity to apply for protection from removal to that ‘third’ country.”).

¹ While the Supreme Court has stayed the preliminary injunction issued in *D.V.D.*, see *DHS v. D.V.D.*, No. 24A1153 (S. Ct. June 23, 2025), the litigation remains ongoing with the non-opt-out class.

Third, Petitioner has not shown any due process violation, such as any denial of notice and an opportunity to be heard. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (recognizing that immigration detainees “are entitled to notice and opportunity to be heard appropriate to the nature of the case”) (internal quotation marks omitted). Although Petitioner alleges that Respondents failed to provide notice of his removal to a third country, Mexico, and deprived him of “a meaningful opportunity” to raise a fear-based claim concerning his removal to a third country, *see* ECF No. 22 ¶¶ 49-53; ECF No. 17 at 2, Respondents have provided evidence to establish otherwise.

The declaration of Deportation Officer Raymundo Lascano III, attached hereto as Exhibit A, establishes that Petitioner has been provided notice of his removal to a third country, Mexico, on two occasions. On September 6, 2025, Petitioner was provided notice that he would be removed to Mexico. Ex. A ¶ 25. Petitioner refused to sign the notice but did not claim a fear of removal to Mexico. *Id.* He was provided a second notice that he would be removed to Mexico on December 11, 2025. *Id.* ¶ 31. Again, Petitioner refused to sign the notice. *Id.* On the same day, Petitioner’s attorney contacted ICE and claimed that Petitioner had a fear of removal to Mexico. *Id.* ¶ 32.

Because Petitioner claimed a fear of removal to Mexico, ICE referred Petitioner to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3) and Petitioner was not removed to Mexico. *Id.* ¶¶ 32-34. The screening interview concerning Petitioner’s fear-based claim about removal to Mexico was conducted on January 2, 2026. *Id.* ¶ 35. ICE determined that Petitioner failed to establish that it is more likely

than not that he will be persecuted or tortured in Mexico. *Id.* Petitioner is not eligible for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 36. Thus, Petitioner fails to establish any due process violation.

Fourth, Petitioner fails to establish a violation of the INA based on Respondents' alleged failure to follow the procedures prescribed under 8 U.S.C. § 1231(b). Petitioner alleges that Respondents violated the INA, 8 U.S.C. § 1231(b), because they did not attempt to remove Petitioner to Cuba, his native country, before seeking his removal to a third country. ECF No. 22 ¶¶ 44-48. Petitioner's claim fails.

Section 1231(b)(2), provides guidelines for determining the countries to which a noncitizen may be removed. Where a noncitizen is not removed to a country chosen by the noncitizen under § 1231(b)(2)(A), then the noncitizen shall be removed to

a country of which the alien is a subject, national, or citizen unless the government of the country . . . does not inform the Attorney General . . . within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country.

§ 1231(b)(2)(D)(i).

Here, ICE attempted to execute Petitioner's removal to Cuba by requesting travel documents and acceptance of Petitioner for removal on July 28, 2025. Ex. A ¶ 19. The government of Cuba did not respond within 30 days. Indeed, to date, no response has been received. *Id.* Thus, ICE determined that Cuba is unwilling to accept Petitioner for removal, and it pursued a third country for Petitioner's removal. *Id.* ¶¶ 20-21. Thus, Petitioner fails to show a violation of the INA.

II. Petitioner is not entitled to release based on claimed deficiencies in the process by which Respondents revoked his OSUP.

Petitioner also seeks release on the ground that the process by which Respondents revoked his OSUP and re-detained him was deficient. ECF No. 22 ¶¶ 54-63. Specifically, Petitioner claims that Respondents failed to provide him notice of the reason for revocation, an interview to respond to the revocation, and a custody review, as required under 8 C.F.R. § 241.4(l). *Id.* ¶¶ 57-61. He further claims that none of the circumstances justifying revocation of his OSUP have been met. *Id.* ¶ 58. He alleges that DHS violated the *Accardi* doctrine and his due process rights when it revoked his OSUP on June 21, 2025. *Id.* ¶¶ 54-63. Based on these alleged violations, he requests release. *Id.* at 14.

Petitioner is not entitled to habeas relief based upon any alleged violations of his procedural due-process rights in connection with the revocation of his supervised release. He has not shown any procedural due-process violation and, even if he had, that would not warrant immediate release.

A procedural due-process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. The proper remedy for lack of procedural due process is additional process, not immediate release.

Petitioner points to the *Accardi* doctrine, for the principle that "agency actions in violation of its own regulations and procedures offends due process." ECF No. 22 ¶ 55. But the Supreme Court in *Accardi* did not determine the sweeping principle that agencies violate due process any time they fail to follow some regulation in a way that

affects a party's rights. As the Supreme Court has clarified, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978); see also *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) ("*Accardi* is based on administrative law principles, not constitutional due process requirements" (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935)), *aff'd*, 38 F. App'x 4 (D.C. Cir. 2002)) (explaining limits on the *Accardi* doctrine).

Moreover, in *Accardi*, the Supreme Court did not order substantive relief (there, the suspension of deportation) but rather ordered the agency to afford the process provided in its regulations. See 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeal's failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*, Petitioner should at most be given what the text of the relevant regulations—here, 8 C.F.R. § 241.4(l)—requires.

Under 8 C.F.R. § 241.4(l), there are two bases on which the Government may revoke a noncitizen's OSUP. First, the Government may revoke an OSUP if the alien violates any of the terms of his or her release. 8 C.F.R. § 241.4(l)(1). Second, the Government may revoke an OSUP on the determination of the Executive Associate Commissioner or a district director, "when, in the opinion of the revoking official: (i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings

against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Here, Petitioner’s OSUP was revoked on June 21, 2025, pursuant to § 241.4(l)(2)(iii) because ICE determined that it was appropriate to execute Petitioner’s final order of removal. Ex. A ¶ 14.

Under 8 C.F.R. § 241.4(l)(3), approximately three months after revocation of the OSUP, the “normal review process” will commence in which the noncitizen will be notified of a records review (custody review) and scheduled for an interview.

On December 3, 2025, ICE completed a POCR for Petitioner under § 241.4. Ex. A ¶ 30. ICE determined that Petitioner’s removal was likely in the reasonably foreseeable future and that he poses a danger to the community. *Id.* ¶¶ 29-31. To date, Petitioner has not been scheduled for an interview.

Even though Petitioner was not been provided an interview to respond to the revocation of the OSUP, he fails to establish that this deviation from the procedures is so serious as to amount to a due process violation, since he has not shown prejudice from any violation, as he must. *Cf. Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1165 (10th Cir. 2004) (“In order to prevail on his due process challenge, Petitioner must show he was prejudiced by the actions he claims violated his Fifth Amendment rights.”). Petitioner has not shown that any procedural violation deprived him of the ability to show that his detention is substantively unwarranted. Rather, ICE may revoke release where it has determined that it is appropriate to enforce a removal order; that was the

basis ICE relied on here and Petitioner has not shown that this decision was substantively flawed. Thus, he does not show that the lack of an interview prejudiced him.

Indeed, Petitioner's removal from the United States was so imminent that he filed an emergency motion requesting that the Court enter an order precluding Respondents from removing him during the pendency of this habeas action. See ECF No. 17.

Even if the Court were to find a due process violation, the proper remedy for a denial of procedural due process would be the proper process, not immediate release. Courts finding procedural violations of similar immigration regulations have regularly concluded that the proper remedy is compliance with the relevant procedural requirement, rather than release. See, e.g., *Medina v. Noem*, No. 25-cv-1768-ABA, 2025 WL 2306274, at *11 (D. Md. Aug. 11, 2025) (explaining that the petitioner had “not pointed to authority showing that the remedy for a violation of [§ 241.4(l)] (if such a violation has occurred) is release from detention”).² Thus, even if Petitioner showed a due process violation, he should at most be given exactly what the text of the regulation requires, which would be an interview, not release.

III. Petitioner is not entitled to a preliminary injunction.

In the Motion, Petitioner seeks emergency preliminary injunctive relief pursuant

² *Accord Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2687354, at *6 (D. Md. Sept. 19, 2025); *Umanzor-Chavez v. Noem*, No. SAG-25-01634, 2025 WL 2467640, at *7–8 (D. Md. Aug. 27, 2025); *Tanha v. Warden, Baltimore Det. Facility*, No. 25-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025).

to Federal Rule of Civil Procedure 65. ECF No. 17 at 2. Petitioner requests that the Court preclude Respondents from removing Petitioner to Mexico pending a reasonable fear interview and adjudication of his habeas claims challenging his removal to a third country. ECF No. 16.³ A court may enter such relief only after the moving party proves: “(1) that she’s substantially likely to succeed on the merits, (2) that she’ll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party’s under the injunction, and (4) that the injunction isn’t adverse to the public interest.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

A. Petitioner has not established a likelihood of success on the merits.

Petitioner claims in the Motion that his continued detention violates *Zadvydas* because he has been detained beyond both the 90-day statutory removal period and the presumptively reasonable six-month period.⁴ See ECF No. 17 at 3-4. Petitioner fails to establish that his detention violates due process as set forth in *Zadvydas*.

The Supreme Court held in *Zadvydas* that 8 U.S.C. § 1231(a)(6) permits detention only so long as the detention does not violate due process. In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under

³ . On December 11, 2025, Judge Wang granted in part and reserved in part the Motion. See ECF No. 18 at 3. Judge Wang ordered Respondents not to remove Petitioner “from the United States until and unless this Court or the United States Court of Appeals for the Tenth Circuit” vacates the Order. *Id.*

⁴ Respondents note that Petitioner does not clearly assert a *Zadvydas* claim in the Amended Petition. See generally ECF No. 22.

8 U.S.C. § 1231 is “presumptively reasonable.” *Id.* at 700-01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. The Court stated that after six months, “once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the [g]overnment must respond with evidence sufficient to rebut that showing.” *Id.* at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (“the onus is on the [noncitizen] to ‘provide[] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that showing’)”) (quoting *Zadvydas*, 533 U.S. at 701).

Petitioner’s order of removal became final on June 15, 2009.⁵ Ex. A ¶ 10. On June 21, 2025, Petitioner was arrested and detained by ICE to execute his final order of removal. *Id.* ¶ 14. Petitioner has remained in ICE custody since he was arrested and detained on June 21, 2025.⁶ On or about July 28, 2025, ICE initiated a request for Petitioner’s travel documents from the Cuban government to effectuate his final order of removal. *Id.* ¶ 19. The Cuban government did not respond. *Id.* Thus, ICE initiated the process for Petitioner’s removal to third country, Mexico. *Id.* ¶ 21-22.

To date, Petitioner has been detained for approximately six-and-a-half months. Petitioner has not met his initial burden to “provide[] good reason to believe that there is

⁵ Petitioner’s removal proceedings occurred while he was serving criminal sentences for crimes (child sex assault) committed in Florida. *See* Ex. A ¶¶ 6-8.

⁶ Petitioner was released from prison on April 16, 2019, and detained by ICE at that time. *Id.* ¶ 12. However, shortly thereafter, he was released on an OSUP because ICE determined his removal to Cuba was impracticable at that time. *Id.* ¶ 13.

*no significant likelihood of removal in the reasonably foreseeable future[.]” See Zadvydas, 533 U.S. at 701 (emphasis added). Notably, in the Motion, Petitioner requested the Court’s immediate intervention because he believed he was scheduled for removal to Mexico *that same day*. ECF No. 17 at 1, 3-4. Thus, his own allegations demonstrate that there was a likelihood of removal in the reasonably foreseeable future. And the declaration attached hereto demonstrates that ICE is continuing its efforts, in accordance with the procedures for third country removal under 8 U.S.C. § 1231(b), to effectuate Petitioner’s removal to Mexico, which ICE believes is likely in the reasonably foreseeable future. *Id.* ¶¶ 34-35. However, ICE will be unable to complete those efforts unless and until the Court vacates its Order preventing Respondents from transferring or removing Petitioner.*

Because Petitioner fails to establish that there is no significant likelihood of removal in the reasonably foreseeable future, Petitioner has not established that Petitioner is entitled to relief under *Zadvydas*.

B. Petitioner has not established irreparable harm.

Petitioner argues that he is likely to suffer irreparable harm if he is removed to Mexico. ECF No. 17 at 5. Specifically, he alleges that if he is removed to Mexico, his claims will be rendered moot. *Id.* Petitioner is correct that his removal to Mexico would moot his claims in this habeas action, and this Court would lack jurisdiction over this action. *See Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1110 (10th Cir. 2010) (“The crucial question [in determining mootness] is whether granting a

present determination of the issues offered will have some effect in the real world.” (emphasis in original)). However, Petitioner has not identified specific circumstances showing why his removal to Mexico will cause harm that is irreparable. As discussed above, because Petitioner’s claims are not cognizable habeas claims, he may still pursue his claims in a civil action even if he is removed to Mexico.

C. Petitioner has not established that the public interest and balance of equities weigh strongly in his favor.

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States’ immigration laws is significant. *See, e.g., id.* at 436.

Petitioner argues that there is no harm to Respondents in “temporarily staying” Petitioner’s removal and that the public interest is served by the Court ensuring that the government is complying with statutory and constitutional due process requirements prior to removing noncitizens to third countries. ECF No. 17 at 5-6. However, Respondents have a valid basis to remove Petitioner to a third country. Petitioner has a final order of removal that has been in place since June 15, 2009. Ex. A ¶¶ 10. Respondents arranged for Petitioner’s removal to Mexico, but Petitioner filed an emergency motion to prevent his removal. *See* Nos. 16 & 17. Respondents have provided Petitioner notice of his removal to Mexico and an opportunity to raise a fear-based claim, which was unsuccessful. Ex. A ¶¶ 25, 31-36. Based on prior efforts to

remove Petitioner to Mexico, ICE believes that Petitioner will be accepted for removal, and his removal is likely in the reasonably foreseeable future. *Id.* ¶ 37. Continuing to prevent Respondents from removing Petitioner would harm the Government, and the public interest in efficiently and swiftly enforcing immigration laws and, thus, these factors weigh against the Court granting an injunction.

Accordingly, the Court should deny the Motion and vacate its December 11, 2025, Order.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Amended Petition (ECF No. 22) and deny the Motion (ECF Nos. 16 & 17).

Dated: January 6, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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