IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

EDGARDO MARAVILLA MARTINEZ, *Petitioner*, v. JOSEPH SIMON, *et al.*, *Respondents*.	Case No. 1:25-cv-1856 (AJT/WEF)

FEDERAL RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

Twenty years ago, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court addressed the potential constitutional issue inherent in the detention of certain aliens subject to final removal orders under the Immigration and Nationality Act ("INA"). To avoid any putative constitutional issue, the Court interpreted the applicable detention statute, 8 U.S.C. § 1231(a)(6), to presumptively authorize detention for a period of six months, only after which is an *alien* able to seek release by showing that removal is not reasonably foreseeable; *if* the alien makes that showing, the burden shifts to the government to justify continuing detention. Petitioner Edgardo Maravilla Martinez, a native and citizen of El Salvador convicted of sex crimes against children, is currently detained under 8 U.S.C. § 1231 pending his removal to a third country. Despite the burden being on *Petitioner* to demonstrate a prima facie case that his removal is not likely in the foreseeable future, Petitioner claims the Immigration and Customs Enforcement ("ICE") is nowhere close to removing Petitioner, and because there is no significant likelihood that Petitioner will be removed in the foreseeable future, his detention violates the INA and Fifth Amendment Due Process Clause. Petitioner also challenges the constitutionality of Petitioner's relief from removal options under 8 U.S.C. § 1231(b)(3)(A).

The Petition should be denied for several reasons. *First*, Petitioner has been detained for only ***six weeks*** as of this filing—far less than the presumptive ***six months*** under *Zadvydas*. *Second*, Petitioner has not met his burden to demonstrate that his removal is not "foreseeable." Petitioner presents no evidence establishing a prima facie case as required by *Zadvydas*. Indeed, as the Fourth Circuit confirmed, simply claiming Petitioner fears torture if removed to a third country does not mean his removal is not "foreseeable." *Third*, additional due process is not warranted because, as the Fourth Circuit has held, "the *Zadvydas* standard is due process[.]" *Castaneda v. Perry*, 95 F.4th

750, 760 (4th Cir. 2024). And Petitioner fails to demonstrate any exceptional circumstances to warrant departure from the *Zadvydas* standard. *Finally*, as to Petitioner's claims that the denial of his (possible) well-founded fear of being tortured in a third country, the INA provides the appropriate due process as U.S. Citizenship and Immigration Services ("USCIS"), not ICE, makes such determination as to whether Petitioner's claims are credible. Therefore, Federal Respondents respectfully request that this Court decline to issue a Writ of Habeas Corpus and deny the Petition.

STATUTORY AND REGULATORY BACKGROUND

A. Detention Under 8 U.S.C. § 1231

In general, when an alien is ordered removed, the INA provides the United States with ninety days to execute the removal. 8 U.S.C. § 1231(a)(1)(A). This "removal period" begins to run on the latest of three 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). During the removal period, the Attorney General is required to detain certain criminal aliens. *See id.* § 1231(a)(2)(A). Moreover, the detention of certain aliens, including inadmissible aliens like Petitioner, may be continued beyond the initial ninety days, or the alien may be released. *Id.* § 1231(a)(6); 8 C.F.R. §§ 241.4(a), (d)(1). After ninety days have lapsed, ICE, in its discretion, may release an alien if he shows, to the satisfaction of ICE, that he "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal[.]" 8 C.F.R. § 241.4(d)(1).

B. Relief from Removal

The INA makes clear that alien may not be removed to a country where "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." 8 U.S.C. § 1231(b)(3)(A). An alien can seek such relief in the form of applying for asylum, withholding of removal through the INA, withholding of removal through the Convention Against Torture ("CAT"), or deferral of removal through CAT. *See id.* § 1158 (asylum); 8 C.F.R. §§ 208.16(b), 1208.16 (withholding of removal under the INA); §§ 208.16(c), 1208.16(c) (withholding of removal under CAT); §§ 208.17, 1208.17 (deferral or removal under CAT) (emphasis added).[1] Such relief may be adjudicated by a USCIS asylum officer or an immigration judge ("IJ"), both of whom are Executive Branch officials. *See* 8 C.F.R. §§ 208.1(a)(1); 1208.1(a)(1). USCIS asylum officers "receive special training in international human rights law, non[-]adversarial interview techniques, and other relevant national and international refugee laws and principles." *Id.* § 208.1(b).

Although a final order of removal typically identifies a particular country to which the alien is to be removed (and/or, alternatively, a particular country to which the alien *cannot* be removed as a result of the above statutory and regulatory provisions), "[a]fter immigration court proceedings have ended, 'DHS retains the authority to remove the alien to any other country authorized by the statute.'" *Ibarra-Perez v. United States*, --- F.4th ---, 2025 WL 2461663, at *5 (9th Cir. Aug. 27, 2025) (quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021)). If DHS "is unable to

[1] Both the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR"), as a part of the Department of Justice ("DOJ"), have promulgated regulations to carry out the various sections of the INA, which are similarly worded in nature. *See* 8 C.F.R. ch. I (DHS), ch.V (EOIR/DOJ). In their argument, Federal Respondents will mostly cite from DHS's regulations as Petitioner's removal proceedings have concluded and it is DHS that is responsible for executing his final removal order.

remove the alien to the specified or alternative country or countries, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [§ 1231(b)]." *Id.* at *5 (quoting 8 C.F.R. § 1240.12(d)); *see also* 8 C.F.R. §§ 241.15, 208.16(f), 1208.16(f). It is thus important to provide a short precis of the two types of "withholding" relief that would preclude DHS from removing an alien to *a* particular country.

1. <u>Withholding of Removal under the INA</u>

To seek withholding of removal *under the INA*, an alien "must establish that if [he] is removed, there is a *clear probability* that [his] 'life or freedom would be threatened . . . because of his race, religion, nationality, membership in a particular social group, or political opinion.'" *Marynenka v. Holder*, 592 F.3d 594, 600 (4th Cir. 2010) (quoting 8 U.S.C. § 1231(b)(3)(A)) (emphasis added); *see* 8 C.F.R. §§ 208.16(b). Credibility determinations and whether an alien has sustained his burden of proof are conducted in the manner described in 8 U.S.C. §§ 1158(b)(1)(B)(ii), (ii), which governs asylum. *See* 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. § 208.16(b). However, federal immigration authorities are mandatorily precluded from affording such relief in certain circumstances, such as when the alien was convicted "of a particularly serious crime" such that he "is a danger to the community of the United States." 8 U.S.C. § 1231(b)(3)(B); *see also* 8 C.F.R. §§ 208.16(d)(2), (3).

2. <u>Withholding of Removal and Deferral of Removal under CAT</u>

Congress implemented CAT through the Foreign Affairs Reform and Restructuring Act ("FARRA") of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-821, which required the federal government to establish regulations to carry out the treaty. Such regulations were promulgated and codified at 8 C.F.R. §§ 208.16(c), 1208.16(c) (withholding of removal); §§ 208.17, 1208.17 (deferral of removal). To obtain withholding of removal *pursuant to CAT*, an alien "must show that it is '*more likely than not* that he or she would be tortured if removed to the proposed country of removal.'" *Marynenka*, 592 F.3d at 600; *see* 8 C.F.R. §§ 208.16(c)(2); 1208.16(c)(1). Like withholding of removal under the INA, withholding of removal under CAT is also subject to mandatory denials. *See* 8 C.F.R. §§ 208.16(d)(2)-(3), 1208.16(d)(2)-(3). An alien's relief, however, does not stop there. Any alien who has been (1) ordered removed, (2) found to be entitled to protection under CAT, and (3) subject to any of the mandatory denial of withholding of removal provisions in either 8 C.F.R. § 208.16(d)(2)-(3) or § 1208.16(d)(2)-(3), "shall be granted deferral of removal to the country where he or she is more likely than not to be tortured." *Id.* §§ 208.17(a), 1208.17(a).

CAT relief does *not* "alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject to detention." *Id.* §§ 208.17(c), 1208.17(c). If an alien is granted withholding of removal or CAT relief, he or she still may be removed to a country where the "government [] will accept the alien into the country's territory." 8 U.S.C. § 1231(b)(1)(C). And importantly, the decision to remove an alien to another country other than his native-born country is within the discretion of the DHS Secretary. *See* 8 C.F.R. §§ 241.15, 1241.15. It is to this topic that the instant memorandum will now turn.

C. Removal to Third Countries

An alien facing removal is first entitled to select a country where he may be removed. *Id.* § 1231(b)(2)(A). However, such entitlement is not guaranteed. *See id.* §§ 1231(a)(2)(C), (D), (E). For instance, the Attorney General may disregard an alien's selection if "the alien fails to designate a country promptly." *Id.* § 1231(b)(2)(C)(i). If an alien is not removed under § 1231(b)(2)(A), "the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen[,]" *id.* § 1231(b)(2)(D), absent certain conditions. *See id.* §§ 1231(b)(2)(D)(i), (ii); §

1231(b)(3)(A). If an alien is not removed pursuant to § 1231(b)(2)(A) or § 1231(b)(2)(D), he may be removed to a third country. *See id.* ¶ 1231(b)(2)(E). Significantly here, "acceptance is *not required* to remove an alien to a" third country. 8 C.F.R. § 241.15(e) (emphasis added). In the case of an alien who chooses to not pick a country of removal, a country selection is made by DHS, either while the alien is in removal proceedings or once an alien has a final order of removal—and remains within the discretion of DHS. *See id.* §§ 241.15 (countries to which aliens may be removed); 1241.15 (stripping IJs and the BIA jurisdiction to review country selections).

D. Relief from Removal to Third Countries

Relief from removal is not precluded to only an alien's home country. If the United States has not received diplomatic assurances that an alien would not be persecuted or tortured, aliens *may* seek relief from removal to *any* country where removal is imminent. 8 U.S.C. § 1231(b)(3)(A). As the INA clearly states:

> 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.[2]

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[2] On April 18, 2025, a district court issued a nationwide injunction that provided aliens who were subject to removal to a third country certain due process rights. *See D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968 (D. Mass. 2025). The court held that the Government must:

> (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand;
>
> (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for CAT protections;
>
> (3) move to reopen the proceedings if the alien demonstrates "reasonable fear"; and
> (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to seek to move to reopen immigration proceedings to challenge the potential third-country removal.

On March 30, 2025, DHS issued a memorandum entitled *Guidance Regarding Third Country Removals*. *See* FREX 2. The March Guidance provides that aliens may be removed to a "country [that] had provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures." *Id.*

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove him to that country and then give him an opportunity to establish that he fears removal there. *See id.* If the alien affirmatively states a fear, trained asylum officers from USCIS will screen the alien, generally within 24 hours, to determine whether he "would more likely than not" be persecuted on a statutorily protected ground or tortured in the country of removal. *Id.* at 2. If the alien *meets* this standard, the alien will be referred to the IJ in the first instance, or if previously in proceedings before an IJ, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under § 1241(b)(3) and CAT, specifically to the newly designated country of removal. *Id.* Alternatively, ICE may choose another country for removal, subject to the same processes. *Id.* If the USCIS asylum officer determines that such alien is not "more likely than not" be persecuted or tortured, the alien is notified and may be removed to such country. *Id.*

Id. at *24. However, on July 3, 2025, the Supreme Court *stayed* the injunction in full. *DHS v. D.V.D.*, --- S. Ct. ---, 2025 WL 1832186, at *1 (U.S. July 3, 2025) (emphasis added).

FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner's Relevant Immigration History

Petitioner is a twenty-eight-year-old native and citizen of El Salvador. Federal Respondents' Exhibit ("FREX") 1, Declaration of James A. Mullan ¶ 5. Petitioner entered the United States at an unknown date and location, without admission or inspection. *Id.* ¶ 6. On November 6, 2012, Petitioner was granted Consideration of Deferred Action for Childhood Arrivals ("DACA"). *Id.* ¶ 7. His DACA status expired November 5, 2014; he has not filed any additional applications for status to remain lawfully in the United States since. *Id.*

On December 15, 2017, Petitioner was convicted of attempted sex trafficking of children and assault with intent to commit first degree sexual abuse by force in the Superior Court of the District of Columbia. *Id.* ¶ 8. Petitioner was sentenced to six years imprisonment and five years of supervised release. *Id.* On December 20, 2021, Petitioner was transferred from the McRae Correctional Facility in McRae-Helena, Georgia, into ICE custody at the Folkston ICE Processing Center in Folkston, Georgia. *Id.* ¶ 9.

On April 14, 2022, ICE issued a Notice to Appear charging Petitioner as inadmissible under sections 212(a)(6)(A)(i), (a)(2)(B), and (a)(2)(A)(i)(I) of the INA, 8 U.S.C. §§ 1182(a)(6)(A)(i), (a)(2)(B), (a)(2)(A)(i)(I). *Id.* ¶ 10. On July 26, 2022, Petitioner conceded he was inadmissible under the INA and the IJ sustained the charges. *Id.* ¶ 11. On August 19, 2022, Petitioner an application for asylum and withholding of removal with the immigration court. *Id.* ¶ 12. On November 7, 2022, the IJ ordered Petitioner removed from the United States to El Salvador but granted Petitioner's application for deferral of removal under the CAT. *Id.* ¶ 13. Petitioner was released from ICE custody under an Order of Supervision on December 30, 2022. *Id.* ¶ 14.

On September 24, 2025, Petitioner was arrested by ERO officers in Washington, D.C., during a traffic stop. *Id.* ¶ 15. On October 1, 2025, ICE notified Petitioner that he has a review of custody status scheduled for December 23, 2025. *Id.* ¶ 17. ERO is actively trying to locate third countries of removal in order to remove Petitioner to a third country. *Id.* ¶ 18.

B. Procedural History

On October 23, 2025, Petitioner filed for a Writ of Habeas Corpus. *See* Pet., Dkt. 1. In his Petition, Petitioner brings four claims for relief. *See* Pet. ¶¶ 30-45. Petitioner claims that because Petitioner has been detained for longer than six months and there is no significant likelihood of removal in the reasonably foreseeable future, his detention violates the INA, *see id.* ¶¶ 30-33, and the Fifth Amendment's Due Process Clause, *see id.* ¶¶ 34-37. Petitioner also claims that ICE violated 8 C.F.R. § 241.4(l), the Fifth Amendment's Due Process Clause, and the *Accardi* doctrine by canceling his supervised release and re-detaining him. *Id.* ¶¶ 41-45. Finally, Petitioner claims that his inability to appeal his screening (for a third-country removal fear claim) under 8 U.S.C. § 1231(b)(3)(A) to an IJ violates his due process rights. *Id.* ¶¶ 38-40.

Notably, although Petitioner seeks relief in the form of a preliminary injunction against his removal from the United States, *see id.* at 10-11, he has not yet moved for one, nor provided any legal basis for one to issue.

ARGUMENT

I. Petitioner's Detention Comports with the INA and Due Process Clause

A. The *Zadvydas* standard is due process.

Petitioner faces a fundamental flaw in his request for the Court to order that he be given more process than what he has received in this case: The Supreme Court has already decided what constitutional due process is required under these circumstances to avoid violating the rights of an alien in his position. "*Zadvydas* largely, if not entirely, forecloses due process challenges to § 1231 detention apart from the framework it established." *Castaneda*, 95 F.4th at 756. Thus, the Fourth Circuit recently held "the *Zadvydas* standard *is* due process: a § 1231 detainee who fails the *Zadvydas* test fails to prove a due process violation." *Id.* (emphasis in the original).

In *Zadvydas*, the Supreme Court determined what "limits" the "Constitution's demands" imposed on "post-removal-period detention" pursuant to § 1231. 533 U.S. at 689. After determining that the Constitution "does not permit indefinite detention," the Court held that a habeas court "should hold continued detention unreasonable" only "if removal is not reasonably foreseeable." *Id.* at 689, 699. But the Supreme Court did not stop there—it went on to detail the process by which that determination would be made. After the end of the presumptively reasonable six-month detention period, an alien must "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. If that showing is made, "the Government must respond with evidence sufficient to rebut that showing." *Id.* This process was sufficient, the Court reasoned, to avoid the "serious constitutional concerns" that "indefinite detention" would raise. *Id.* at 682.

The upshot of this decision is straightforward. "[T]he Supreme Court . . . had occasion to consider the constitutional implications of indefinite detention under § 1231(a)," and it "offered [courts] a standard through which to judge indefinite-detention cases—the *Zadvydas* standard." *Martinez*, 968 F.3d at 566; *see Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (*Zadvydas* "articulates the outer bounds of the Government's ability to detain aliens . . . without jeopardizing their due process rights"). There is accordingly no warrant for the Court to hold that due process demands more than what the Supreme Court already held it requires in this circumstance. *See Wang*, 320 F.3d at 146 (rejecting claim for bond hearing because "pursuant to *Zadvydas*, an alien's due process rights are not jeopardized by his continued detention as long as his removal remains reasonably foreseeable."). Petitioner has received all the process to which he is entitled.

B. Petitioner's case is not one with exceptional circumstances.

Despite the *Zadvydas* standard is due process, the Fourth Circuit acknowledged the government's admission "that as-applied constitutional challenges remain available to address 'exceptional' cases." *Castaneda*, 95 F.4th at 761 (quoting *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022)). The Fourth Circuit assumed and did not expressly decide whether "due process challenges to § 1231 detentions may proceed outside the *Zadvydas* framework when the alien presents, as a threshold matter, exceptional circumstances warranting that departure." *Castaneda*, 95 F.4th at 761. Here, Petitioner alleges no exceptional circumstances. And "[f]urther still, these very habeas proceedings are affording [Petitioner] due process. As the Supreme Court has recognized, 'habeas corpus in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office.'" *Id.* (quoting *Fay v. Noia*, 372 U.S. 391, 402 (1963), *overruled on other grounds by Wainwright v. Sykes*, 433 U.S. 72, 97 S (1977)); *see also Hassoun v. Searls*, 968 F.3d 190, 201 (2d Cir. 2020) ("[T]he availability of habeas corpus is 'sufficient to satisfy the requirements of the Due Process Clause.'" (quotation omitted)). Therefore, "[Petitioner] has not shown exceptional circumstances warranting a departure from the *Zadvydas* framework." *Castaneda*, 95 F.4th at 762.

II. Petitioner's Detention Satisfies the *Zadvydas* Standard

A. Petitioner six-week detention fails to meet *Zadvydas'* reasonable presumption of a due process violation.

The Supreme Court has held detention of an alien who is subject to a final order of removal is presumptively reasonable pursuant to § 1231(a)(6) for at least six months. *See Zadvydas*, 533 U.S. at 701; *see also Clark v. Martinez*, 543 U.S. 371, 386 (2005) (applying the holding in *Zadvydas* to aliens "ordered removed who [are] inadmissible under [§] 1182"). Petitioner has only been in post-final order of removal immigration detention since September 24, 2025—a little over six weeks. *See* FREX 1 ¶¶ 15-16; Pet. ¶ 25. Thus, he has not yet been in detention pursuant to § 1231 for six months, and his detention in order to effectuate his final order of removal is presumptively reasonable.

Yet, Petitioner claims—without explanation—that the "six-month presumptively reasonable period for continued removal efforts ha[s] long since passed." Pet. ¶ 31. Presumably, Petitioner believes that the reasonableness of the length of his detention should be based largely on the years he spent *not* detained—i.e., since his final order of removal in November 2022. *See* FREX 1 ¶ 13. This argument fails for several reasons. First, *Zadvydas* alone makes clear that the six-month reasonable presumption counts the time in *detention* and not the duration of the *removal period*. *See* 533 U.S. at 682 ("[W]e must decide whether this post-removal-period statute *authorizes* the Attorney General to *detain* a removable alien indefinitely.") (emphasis added). Second, another jurist of this Court has held that a calculation of the length of detention begins when a Petitioner is detained *or* re-detained, whichever is the latest. *See Shaikh v. Lyons*, 1:25-cv-811, Doc. No. 12, Order at 3 (E.D. Va. June 23, 2025) (Alston, J.); *id.* at 3-4 (citing cases). Therefore, Petitioner fails to demonstrate that he meets *Zadvydas*' six-month detention requirement, and Petitioner's detention is thus presumed lawful and constitutional.

B. Petitioner fails to demonstrate a good reason to believe that there is no significant likelihood of his removal.

After six months, it is *not* the case that "every alien must automatically be placed on supervised release." *Menghua Wan v. Crawford*, 2014 WL 970180, at *3 (E.D. Va. Mar. 12, 2014). Rather, confinement may continue unless the alien can meet a two-prong standard: "[t]he *alien must show* (i) that he is being held beyond the presumptively reasonable six-month period, and (ii) that there is no significant likelihood of removal in the foreseeable future." *Id.* (emphasis added);

see Castaneda v. Perry, 2022 WL 4624832, at *3 (E.D. Va. Sep. 30, 2022) (Giles, J.). "If the alien makes these prima facie showings, the burden shifts to the government to provide evidence in rebuttal." *Menghua Wan*, 2014 WL 970180, at *3 (citing *Zadvydas*, 533 U.S. at 701); *see Castaneda*, 2022 WL 4624832, at *3. As discussed above, Petitioner has been detained pursuant to 8 U.S.C. § 1231 for only six weeks—far less than the six-month presumption of *Zadvydas*. *See* Pet. ¶ 31. Accordingly, his claim fails on this ground alone.

However, Petitioner argues that despite not meeting the requirement of being detained for six months, there is no significant likelihood of his removal. Pet. ¶¶ 34-37. Petitioner "believes that Respondents intend to deport him to Nicaragua" but "does not believe that Nicaragua would have any reason to accept Petitioner for removal to that country." *Id.* ¶ 26. Petitioner claims that Respondents "have no factual basis to believe that such third country removal will ever become practicable and legally permissible." Pet. ¶ 35. These vague and generalized allegations do not take into account the particularized evidence regarding Petitioner's circumstances and fail to recognize binding Fourth Circuit precedent.

Under *Zadvydas*, the initial burden is squarely on Petitioner to show that removal is not significantly likely in the foreseeable future. *See Ming Hui Lu v. Lynch*, 2016 WL 375053, at *6 (E.D. Va. Jan. 29, 2016) (citing *Zadvydas*, 533 U.S. at 701) *see also*, *e.g.*, *Andrade*, 459 F.3d at 543 (holding that detention of more than three years under § 1231 was constitutionally sound under *Zadvydas*); *Abiodun v. Mukasey*, 264 F. App'x 726, 729 (10th Cir. 2008) (upholding continued detention of an alien under *Zadvydas* awaiting removal for three years); *Doucoure v. Chertoff*, 2007 WL 1726567, at *4 (D.N.J. June 13, 2007) ("While Petitioner has remained in detention for almost three years, th[at] fact alone does not qualify Petitioner for release from custody."); *Naranjo* *v. Spivey*, 2018 WL 504404, at *3 (M.D. Ga. Jan. 22, 2018) (report and recommending finding that three year detention was permissible under *Zadvydas* as removal was reasonably foreseeable).

Petitioner provides absolutely no evidence demonstrative of a good reason to believe that there is no significant likelihood of his removal. To the contrary, he evinces a strong belief that he is in imminent danger of removal to a third country, potentially Nicaragua—which is the entire basis of his Petition. *See, e.g.*, Pet. ¶ 26 ("Petitioner believes that Respondents intend to deport him to Nicaragua"); *id.* at 10 (seeking to enjoin Respondents from removing Petitioner "to any other country"). Moreover, Petitioner attempts to flip the burden, claiming that "Respondent continues to detain Petitioner without evidence that they will be able to remove him imminently, to El Salvador or to Nicaragua or to any other country." *Id.* ¶ 36; *see also id.* ¶ 35 (alleging that Federal Respondents "have no factual basis to believe that such third country removal will ever become practicable and legally permissible").

Jurists of this Court have held that "the ordinary delays associated with processing an alien's claim for withholding or asylum do *not* normally trigger the concerns raised in *Zadvydas*." *Euceda v. Evans*, 2017 WL 1534197, at *5 (E.D. Va. Apr. 24, 2017) (Brinkema, J.) (emphasis added). "Indeed, if such procedural delays were sufficient to trigger *Zadvydas*, many if not most BIA matters would be subject to parallel proceedings in district courts, given the processing times associated with such proceedings." *Id.* The Fourth Circuit recently confirmed this approach for the purposes of withholding-only proceedings, and held that under the *Zadvydas* inquiry "the absence of a date certain—imminent or not—for the conclusion of [withholding-only] proceedings is of no moment." *Castaneda*, 95 F.4th at 758. "Stated differently, ongoing withholding-only proceedings do not, standing alone, cast doubt on the foreseeability of an alien's removal in the future." *Id.*; *see Perez v. Berg*, 2025 WL 566884, at *4 (D. Minn. Jan. 6, 2025); *Juarez v. Choate*, 2024 WL

1012912, at *4 (D. Colo. Mar. 8, 2024); *Cabrera Galdamez v. Mayorkas*, 2023 WL 1777310, at * 8 (S.D.N.Y. Feb. 6, 2023). In addition, "the mere passage of time [is] insufficient to meet the petitioner's initial burden to demonstrate no significant likelihood of removal." *Newell v. Holder*, 983 F. Supp. 2d 241, 248 (W.D.N.Y. 2013); *see also Head v. Keisler*, 2007 WL 4208709, at *4 (W.D. Okla. Nov. 26, 2007) ("[A] mere delay does not trigger the inference that an alien will not be removed in the reasonably foreseeable future."). Indeed, so long as "[p]rogress, however slow, is being made" towards an alien's removal, his continued detention is in accord with due process under *Zadvydas*. *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001).

The Sixth Circuit has also held that the pendency of withholding-only proceedings does not render removal not reasonably foreseeable. In *Martinez v. Larose*, an alien subject to a reinstated removal order argued, like Petitioner, that his ongoing withholding-only proceedings made his removal not reasonably foreseeable. 968 F.3d 555, 565 (6th Cir. 2020). Specifically, the alien asserted that his removal was not reasonably foreseeable because "he ha[d] been in detention for roughly two years"; "his case before the Sixth Circuit . . . was still being held in abeyance"; "the median time for an appeal in the Sixth Circuit [wa]s around seven months"; and "if he prevail[ed], his case w[ould] have to wind back through the immigration courts." *Id.* The Sixth Circuit rejected this argument and instead "agree[d] with the district court that [his] removal [wa]s reasonably foreseeable" because he was "not stuck in 'removable-but-unremovable limbo'" like the petitioners in *Zadvydas*. *Id.* If the alien lost, then "nothing should impede the government from removing him to El Salvador," and if he prevailed, he could "argue at that point that there [wa]s no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Jurists of this Court have reached the same conclusion. In *Crespin v. Evans*, an alien detained pursuant to a reinstated removal order "argu[ed] that there [wa]s no significant likelihood of removal in the reasonably foreseeable future because (i) he ha[d] already been granted relief from removal and (ii) respondent [wa]s unlikely to succeed in its appeal of the [IJ's] deferral decision." 256 F. Supp. 3d 641, 651-52 (E.D. Va. 2017) (Ellis, J.). Judge Ellis rejected that contention, distinguishing *Zadvydas* on the ground that the petitioner "[wa]s a citizen of El Salvador and it [wa]s undisputed that there [we]re no diplomatic barriers to his removal." *Id.* at 652. Further, an alien such as Petitioner "remains removable under his reinstated removal order because [the government] could seek to remove him to a third country." *Id.* Judge Brinkema similarly denied relief in *Euceda*, concluding that "[s]uccessful petitioners under the *Zadvydas* framework prototypically include persons whom the government is 'unable to remove,' or persons who are 'left in [a] removable-but-unremoveable limbo.'" 2017 WL 1534197, at *4 (internal citations omitted). The argument that the petitioner was "likely to prevail in the BIA and therefore unlikely to be removed in the foreseeable future" thus did not carry his *Zadvydas* burden; on the contrary, "removal remain[ed] 'reasonably foreseeable' if, at the conclusion of the withholding-only process, [the petitioner] d[id] not prevail." *Id.* at *5. Here, Petitioner was granted CAT relief, stalling his removal to his native country of El Salvador, *see* FREX 1 ¶ 13, and alleges that he intends to seek further CAT relief *if* notified that he will be removed to Nicaragua, *see* Pet. ¶ 26.

Petitioner also contends that the *government* lacks evidence indicating that Petitioner's removal to any third country is in the foreseeable future. *See* Pet. ¶¶ 26, 28, 35-36. In so doing, he errs on two fronts. First, as already noted, it is the *Petitioner*, not the government, who has the initial burden to demonstrate that "there is no significant likelihood of removal in the foreseeable future." *See, e.g.*, *Castaneda*, 2022 WL 4624832, at *3; *Menghua Wan*, 2014 WL 970180, at *3. Second, that there is no evidence of travel documents to execute Petitioner's removal is well insufficient to warrant habeas relief. *See Mattete v. Loiselle*, 2007 WL 3223304, at *4 (E.D. Va.

Oct. 26, 2007) ("Even though a nation has not granted travel documents to a petitioner, or has refused to grant travel documents, [that] does not prove that a petitioner has no reasonable likelihood of being removed."). Indeed, so long as "[p]rogress, however slow, is being made" towards an alien's removal, his continued detention is in accord with due process under *Zadvydas*. *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001). Therefore, because Petitioner fails to make a prima facie showing that there is no significant likelihood of removal in the foreseeable future, Petitioner's detention cannot violate the INA or the Fifth Amendment.

III. This Court Lacks Jurisdiction Over Petitioner's Third Country Removal Claim

A. This Court lacks jurisdiction over Petitioner's third-country removal claim because the INA and CAT preclude judicial review of such claim.

Petitioner also seeks review of USCIS's determination that Petitioner will not be persecuted or tortured if he were removed to a third country by an IJ. *See, e.g.*, Pet. at 10-11 (seeking a preliminary injunction of removal to "any other country" without notice and "adequate opportunity to apply for deferral of removal under [the CAT] . . . including review by an [IJ] and all appeals therefrom"). The relief Petitioner seeks is not cognizable here because habeas jurisdiction only lies to review the legal propriety of Petitioner's *current detention*. "[H]abeas 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); *see also Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020). It is for this reason that, as the Supreme Court has held, "the great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." *Walker v. Wainwright*, 390 U.S. 335, 337 (1968). And here, the relief Petitioner seeks, review of USCIS's *future* determination that Petitioner will not be persecuted or tortured if he were removed to some third country, *see* Pet.'s Br. at 1, has nothing to do with his current civil immigration *detention*. Indeed, the application of this wellsettled authority here becomes clear given that Petitioner has *already* filed a petition for a writ of habeas corpus seeking review of exactly that—the propriety of his current civil immigration detention, which remains pending before this Court.

To anticipate Petitioner's retort, it is irrelevant that USCIS's third country removal process started the chain of causation—to borrow a term from tort law—to his current immigration detention. The Fourth Circuit has rejected habeas jurisdiction under other circumstances, specifically involving the initial arrests of aliens subject to removal proceedings. In *D.B. v. Cardall*, 826 F.3d 721 (4th Cir. 2016), an individual who was initially apprehended by Border Patrol officers brought a habeas petition challenging, *inter alia*, those officers' conclusion that he fit the statutory definition of an "unaccompanied alien child" ("UAC") at the time of that initial apprehension. *See id.* at 726-28. Both Judge Cacheris and the Fourth Circuit held that, regardless of the propriety of the individual's initial apprehension, the only pertinent habeas question was whether the child's then-current circumstances rendered him an "unaccompanied alien child" subject to government custody. *Id.* at 734 n.10 ("We need not address the propriety of the Border Patrol's initial UAC determination with respect to R.M.B. The question before the district court – and now before us – is whether R.M.B.'s current detention complies with federal statutes and the Constitution."). And as the court noted, Petitioner may challenge only his *present* detention. *See D.B.*, 826 F.3d at 734 n.10 ("the question before the district court . . . [is] whether [the petitioner's] *current detention* complies with federal statutes and the Constitution" (emphasis added)); *Doe v. Perry*, 2022 WL 1837923, at *2 (E.D. Va. Jan. 31, 2022). Thus, this Court should dismiss Petitioner's third country removal claim on the basis that it lacks jurisdiction to review it.

B. Congress stripped this Court of jurisdiction to exercise judicial review of the types of immigration-related action at issue here

In 1996, Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), a statute that "significantly restructur[ed] the scope of judicial review of immigration decisions." *Humphries v. Various Fed. USINS Employees*, 164 F.3d 936, 941 (5th Cir. 1999); *see also Hatami v. Ridge*, 270 F. Supp. 2d 763, 767 (E.D. Va. 2003). The IIRIRA provisions at issue here divest the district courts of jurisdiction to review particular immigration actions or decisions. And through the REAL ID Act of 2005, *see* Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Congress unequivocally clarified the sweeping nature of its decision to preclude district court jurisdiction over claims seeking to challenge certain Executive Branch decisions in the immigration context.

Emblematic of this "jurisdictional-channeling"—and that which divests this Court of jurisdiction over Petitioner's third country removal claim— is 8 U.S.C. § 1252(g), which provides as follows:

> Except as provided in this section and notwithstanding *any other provision of law (statutory or nonstatutory)*, including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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* against any alien under this chapter.

8 U.S.C. § 1252(g) (emphasis added). As the Supreme Court has held, Congress promulgated § 1252(g) in order "to give some measure of protection" from litigation stemming from the specific decisions referenced in the statutory language. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 (1999) ("*AADC*"); *see also Hatami*, 270 F. Supp. 2d at 767. Put simply, though this section "does not sweep broadly," *Tazu v. Atty. Gen.*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as

provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

Petitioner's third country removal claim undoubtedly "aris[es] from the decision . . . to . . . execute [a] removal order," 8 U.S.C. § 1252(g); indeed, Petitioner *precisely* asks this Court to prevent federal immigration officials from executing his removal order. Circuit courts, including the Fourth Circuit, have held § 1252(g) applies to the discretionary decision to execute a removal order. *Loera Arellano v. Barr*, 785 F. App'x 195 (4th Cir. 2019); *see also Tazu*, 975 F.3d at 297–99 ("The plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda*, 55 F.4th at 777–78 ("No matter how [petitioner] frames it, his challenge is to the Attorney General's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review."); *E.F.L.*, 986 F.3d at 964–65 (holding that § 1252(g) barred review of the decision to execute a removal order while an individual sought administrative relief); *Camerena v. Director, ICE*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (holding that § 1252(g) bars review of challenges to the discretionary decision execute a removal order); *Arce v. U.S.*, 899 F.3d 796, 800 (9th Cir. 2018) (finding that § 1252(g) would bar claims asking the Attorney General to delay the execution of a removal order); *Hamama v. Homan*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."). Accordingly, the Court should dismiss Petitioner's third country removal claim for this independent reason as well.

VI. Petitioner is Not Entitled to Any Additional Due Process in His Third Country Removal.

Aliens, such as Petitioner, who have not effected a lawful entry into the United States, are only entitled to due process in the form that Congress prescribed through the INA would only be afforded the due process rights that the INA prescribes. *See Thuraissigiam*, 591 U.S. at 140. Other jurists of this Court long applied this straightforward rule to hold that aliens "'on the threshold of initial entry' are entitled only to 'the procedure authorized by Congress'" even as concerns detention. *Hong v. United States*, 244 F. Supp. 2d 627, 634 (E.D. Va. Feb. 13, 2003) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (denying habeas petition to compel bond hearing for legal permanent resident stopped at the border); *see Aslanturk v. Hott*, 459 F. Supp. 3d 681, 692-94 (E.D. Va. 2020) ("[T]he due process rights afforded to Petitioner as an arriving alien are not those of the 'traditional standards of fairness encompassed in due process of law[,]' but rather, Petitioner's due process rights flow from those prescribed by Congress." (quoting *Mezei*, 345 U.S. at 212)); *see also Bukhari v. Piedmont Reg'l Jail Auth.*, 2010 WL 3385179, at *4-5 (E.D. Va. Aug. 20, 2010) ("aliens standing on the threshold of entry are not entitled to the constitutional protections provided to those within the territorial jurisdiction of the United States." (citation omitted)).

Here, neither the INA nor its implementing regulations allow an alien seeking withholding of removal from a third country pursuant to 8 U.S.C. § 1231(b)(3)(A) to appeal a USCIS's asylum officer's negative persecution screening to an IJ. At issue here are 8 U.S.C. § 1231(b)(3)(A) and FARRA, meaning Petitioner will be screened for withholding of removal under the INA, withholding of removal under CAT, and deferral of removal under CAT. *See* 8 C.F.R. §§ 208.16, 208.17. These regulations are *silent* as to whether review by an IJ is warranted. *See id.* (emphasis added). Accordingly, Petitioner is not entitled to any additional due process beyond what these regulations prescribe—including review by an IJ.[3]

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[3] While other regulations provide for a "credible fear" or "reasonable fear" interview, neither of those are at issue here. Credible fear or reasonable fear interviews are available only for certain classes of aliens—which Petitioner does not fall into. *See* 8 C.F.R. § 208.30(a) (credible fear

Yet, even in the event this Court finds more process may be due, Federal Respondents contend that such due process analysis favors Federal Respondents. As a general matter, "when the government deprives a person of a protected liberty or property interest, it is obliged to provide 'notice and opportunity for hearing appropriate to the nature of the case.'" *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (195)). "[D]ue process requires, at a minimum, that the [government] adopt procedures to ensure that [aliens] are accorded an opportunity to be heard at a meaningful time and in a meaningful manner[.]" *Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002) (citing *Jacinto v. INS*, 208 F.3d 725, 727 (4th Cir. 2000)); *see Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In immigration matters, such notice and opportunity to be heard "might well be unacceptable in other proceedings." *Mathews v. Diaz*, 426 U.S. 67, 79-80, 96 (1976).

The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when the Executive Branch determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702-03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"). As now, Justice Kavanaugh explained in concurrence in *Kiyemba*, the "*Munaf* decision applies

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screens apply only to arriving aliens in expedited removal proceedings under 8 U.S.C. § 1225(b)(1) and alien stowaways under 8 U.S.C. § 1225(a)(2)); 8 C.F.R. § 208.31(a) (reasonable fear screenings apply only to aliens who are ordered removed pursuant to 8 U.S.C. § 1228(b) and aliens who are subject to reinstated order of removal under 8 U.S.C. § 1231(a)(5)). Moreover, these screenings use a different evidentiary standard to assess claims—i.e., "significant possibility" and "reasonable possibility" versus "more likely than not." *See* 8 C.F.R. §§ 208.30(e), 208.31(c); *Tomas-Ramos v. Garland*, 24 F.4th 973, 978 n.2 (4th Cir. 2022) ("The 'reasonable possibility' standard is lower than the 'clear probability' standard required to establish eligibility for withholding of removal, but higher than the standard required to establish a "credible fear" of persecution in expedited removal proceedings.") (internal citations omitted).

here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States." *Kiyemba*, 561 F.3d at 517-18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess [that] assessment," unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6.[4]

Lest there be any doubt about whether the Guidance and the procedures described therein and provided to Petitioner withstand legal and constitutional scrutiny, the Supreme Court resolved that doubt when it vacated a stay entered by United States District Court for the District of Massachusetts in *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025), *clarified by* 145 S. Ct. 2627 (2025). "[W]hen [the Supreme] Court issues a decision, it constitutes a precedent that commands respect." *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 606 U.S. ---, 145 S. Ct. 2658, 2263 (2005) (Gorsuch, J., concurring in part and dissenting in part). This includes stay decisions, which "squarely control[]" in "like cases." *Trump v. Boyle*, 606 U.S. ---, 145 S. Ct. 2653, 2654 (2025). And as the Supreme Court held in *D.V.D.*, the "June 23 order stayed the April 18 preliminary injunction in full[.]" 145 S. Ct. at 2629.

Nor would a weighing of the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), change this analysis. The three factors relevant to assessing Petitioners' due process claim are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous

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[4] This framework also requires rejection of any argument of entitlement to an individualized determination under the CAT regulations. The law provides for assurances that an alien would not be tortured if removed to a "specific country," but once the Attorney General and the Secretary of State deem those assurances "sufficiently reliable," that is the end of the inquiry. *See* 8 C.F.R. § 1208.18(c)(1)-(3); *see also Munaf*, 553 U.S. at 703 n.6.

deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. 319, 335 (1976). Each factor weighs in Federal Respondents' favor.

<u>1.</u> Federal Respondents acknowledge that "'the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). But Petitioner is not in removal *proceedings* under 8 U.S.C. § 1229a; he is instead in the removal *period* under 8 U.S.C. § 1231(a)(1)(B). *See Semedo*, 2008 WL 5483028, at *2 ("When removal proceedings end, the removal period begins") (emphasis added). And "[w]hile acknowledging that aliens have due process rights, the [Supreme] Court [] made clear that '[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.'" *Miranda*, 34 F.4th at 360 (quoting *Demore v. Kim*, 538 U.S. 510, 521 (2003)) (internal citations omitted).

The private interests that Petitioner references are significantly diminished when Petitioner has been ordered removed. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) ("[Petitioner]'s private interests are further diminished by the fact that he is subject to an order of removal from the United States); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952). Petitioners' private liberty interest is further diminished when their release is available on the condition that they leave the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999). Indeed, the Supreme Court and Fourth Circuit have made clear that an alien who has not been admitted, like Petitioner, "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)); *see* FREX 1 ¶¶ 10-11 (charging Petitioner with being inadmissible), 13 (ordering Petitioner removed).

An alien's private interest is even more diminished when release into the U.S. would be an assistance to an ongoing violation of U.S. law. *See* 8 U.S.C. § 1182(a) (inadmissibility grounds). In addition to these inadmissibility grounds, 8 U.S.C. § 1325 provides that any alien who "enters or attempts to enter the [U.S.] at any time or place other than as designated by immigration officers," "shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both[.]" *Id.* § 1325(a)(1); *see id.* § 1325(b) (civil penalties). In fact, such violation has been recognized by other courts, including the Supreme Court. *See AADC*, 525 U.S. at 491 ("in all cases, deportation is necessary in order to bring an end [to] an ongoing violation of [U.S.] law"); *Lopez-Mendoza*, 468 U.S. at 1039 ("The purpose of deportation is not to punish past transgressions but rather to put an end to a continuing violation of the immigration laws"); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800-01 (7th Cir. 2002) (no liberty interest in remaining in violation of applicable U.S. law). Accordingly, the first *Mathews* factor weighs in favor of the government.

2. Regarding the second factor, the risk of erroneous deprivation is at a minimum as Petitioner's screening would be conducted by a highly trained USCIS asylum officer. "The legal framework surrounding the U.S. immigration, asylum, refugee, and non-*refoulement* adjudication process is complex, to say the least." *A.B.-B. v. Morgan*, 548 F. Supp. 3d 209, 221 (D.D.C. 2020) (emphasis in the original). As the USCIS website describes:

> The [asylum] training course includes topics such as international refugee law and the U.S. Asylum Program's role in world-wide refugee protection, U.S. asylum law and its interpretation by the Board of Immigration Appeals and federal appellate courts, interviewing techniques, researching country of origin information, and decision-making/writing. Separate training sessions address interviewing survivors of torture, identifying possible cases of victims of trafficking, handling cases of children, and handling claims that may be specific to women. The training course also includes lessons regarding the Asylum Program's history, organizational structure, mission, goals, and values, ethics, and an overview of the Asylum

> Program's process and procedures. Other topics covered include fraud identification and evaluation techniques, and national security concerns.

USCIS, *Asylum Division Training Programs* (last updated Dec. 19, 2016)[5] (emphasis added). A USCIS asylum officer is most equipped government officer to handle this type of screening. Indeed, Petitioner's screening will also reviewed by *supervisory* asylum officer. Such review clearly minimizes any deprivation of Petitioner's interest. And ultimately, Petitioner's position here—once distilled to its essence—that he is entitled, as a matter of constitutional due process, to a separate *administrative* review in an adversarial setting of USCIS's trained administrative determination. Courts, however, have rejected the notion that a live, trial-like hearing is the cure-all for all potential due process ills. *See, e.g.*, *Buckingham v. Sec'y*, 603 F.3d 1073, 1082 (9th Cir. 2010); *Bowens v. N.C. Dep't of Hum. Res.*, 710 F.2d 1015, 1020 (4th Cir. 1983). Therefore, the second *Mathews* factor favors the government.

3. Regarding the third factor, the government's interests in the removal of aliens are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted.

A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). "[A]ny policy toward [noncitizens] is vitally and intricately interwoven with contemporaneous policies in regard to the

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[5] Retrievable at: https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-division-training-programs (last accessed Nov. 3, 2025).

conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Diaz*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda*, 34 F.4th at 364. Indeed, this Court has made clear that the government has a significant and "well-established interest in immigration regulation, the prompt execution of removal orders, prevention of flight risk, and public safety." *Castaneda*, 2022 WL 4624832, at *6 (internal quotations omitted). And "[t]he continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

Therefore, the third *Mathews* factor weighs in favor of the government.

* * *

In short, should the need arise, a highly trained USCIS asylum officer will conduct a fear screening pursuant to 8 U.S.C. § 1231(b)(3)(A) and determine (as well as a supervisory asylum officer) whether Petitioner would be more than likely to be tortured if he were removed to a third country. Nothing in the INA requires any further review, and the *Mathews* factors demonstrate that this is appropriate due process.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully ask this Court to deny the Petition for a Writ of Habeas Corpus.

Dated: November 10, 2025

Respectfully submitted,

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