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

WILLIAM MUTHEE MUIRURI,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-25-1270-HE
	)	
DON JONES, et al.,	)	
	)	
Respondents.	)	

RESPONDENTS' RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Dated: November 12, 2025

Respectfully Submitted,

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RESPONDENTS' RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents[1] submit their Response in Opposition to Petitioner's Petition for a Writ of Habeas Corpus ("Pet.") (Doc. 1). Respondents submit the following in support.

Petitioner's Claims

Petitioner brings two claims before the Court. Count I asserts a "violation of the right to administrative remedies," and Count II asserts a "violation of the Suspension Clause of the U.S. Constitution." Pet. at 11-12, ¶¶ 47-50. Petitioner asks this Court to issue "a writ of habeas corpus requiring that Respondents provide Petitioner with an opportunity to seek a stay of removal as well as an interview with an asylum officer prior to removing him from the United States." Pet. at 2, ¶ 6; *id.* at 9, ¶ 33 ("[T]his Court should stay Petitioner's removal to receive a decision on his motion to reopen proceedings with the Department of Justice."); *id.* at 12, ¶ 50 ("This Court must stay Petitioner's removal to allow the Department of Justice to review his motion to reopen proceedings."). In essence, the Petition asks the Court to do three things: (1) make Respondents accept his motion for a stay of removal, (2) make Respondents give him an interview with an asylum officer, and (3) stay his removal pending a decision on his Motion to Reopen his removal proceedings, filed on October 25, 2025.[2]

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[1] This Response is not filed on behalf of Respondent Don Jones, Warden of Kay County Detention Center. It is respectfully submitted that Warden Jones' interests in this litigation are contractually derivative of the federal Respondents' interests and that a separate response from Warden Jones is not necessary.

[2] It appears the Petitioner has also requested a stay of removal to the Immigration Court. Pet. at 11, ¶ 44 (noting the filing of "a motion to reopen proceedings and to stay removal to the Kansas City Immigration Court.").

The Court can easily dispense with his second request, as he is not entitled to such relief on the face of the regulation he cites. Specifically, Petitioner references 8 C.F.R. § 208.31. Pet. at 7, ¶ 23; *id.* at 12, ¶ 49. However, this regulatory provision applies to "any alien *ordered removed under section 238(b) of the Act* or whose deportation, exclusion, or removal order is *reinstated under section 241(a)(5) of the Act* who, in the course of the administrative removal or reinstatement process, expresses a fear of returning to the country of removal." 8 C.F.R. § 208.31(a). Petitioner has been ordered removed pursuant to Section 237 of the Immigration and Nationality Act, and *not* Sections 238(b) or a reinstatement of an order under Section 241(a)(5). *See* Ex. 1 ("BIA Dismissal") at 3 (listing charges). Accordingly, it does not apply to him.

The Court lacks jurisdiction to provide the remaining requested relief. The Petition should accordingly be denied.

Relevant Background

Petitioner is a native and citizen of Kenya. Ex. 2 ("Milum Decl.") ¶ 4. On June 30, 2010, DHS personally served him with a Notice to Appear ("NTA"), charging him with being removable from the United States pursuant to INA §§ 237(a)(1)(C)(i) (nonimmigrant status violators) and 237(a)(3)(D) (falsely claiming citizenship). *Id.* During his removal proceedings, Petitioner withdrew his application for withholding of removal. Ex. 1 at 3-4. On May 29, 2013, an immigration judge ordered him removed to Kenya. *Id.* ¶ 5. On July 2, 2013, Petitioner filed an appeal to the Board of Immigration Appeals ("Board"). *Id.* On December 17, 2014, the Board dismissed the appeal; no timely appeal to the Board's decision was filed. *Id.*; Ex. 1.

On May 21, 2025, Petitioner filed a Form I-914, Application for T Nonimmigrant Status, before United States Citizenship and Immigration Services ("USCIS"). *Id.* ¶ 7. Following Petitioner's detention for removal, Petitioner, through counsel, attempted to personally serve ERO with a Form I-246, Application for Stay of Deportation or Removal, at the Oklahoma City, Oklahoma ERO sub-office. *Id.* ¶ 9. This filing was rejected due to insufficient payment and because it lacked a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. *Id.* On or about October 28, 2025, Petitioner, through counsel, served the Wichita, Kansas ERO sub-office with the Form I-246 by regular mail. *Id.* ¶ 10. This filing was rejected by the Wichita ERO sub-office because the Wichita ERO sub-office only accepts hand-delivered submissions. *Id.* On October 31, 2025, Petitioner's Form I-246 packet was returned and delivered to an address located in Delray Beach, Florida 33445. *Id.* To-date, a Form I-246, Application for Petitioner's Stay of Deportation or Removal has not been properly submitted to ERO pursuant to 8 C.F.R. § 241.6. *Id.* ¶ 13. Petitioner has, however, recently filed a motion to reopen his removal proceedings with the Kansas City, Missouri immigration court, which is currently pending. *Id.* ¶ 11 (noting the filing on October 28, 2025). This filing includes a motion to stay removal component as well. Pet. at 11, ¶ 44.

Petitioner's submission asserts that he was "subjected to labor trafficking in the U.S." and discusses his application for a "T visa" Pet. at 10, ¶¶ 36-37. These factual assertions have no bearing on the legal issues presented in his Petition, except only to the extent that it explains the reasons he wishes to stay while his motion to reopen is pending. "The filing of an Application for T Nonimmigrant Status has no effect on DHS authority or discretion to

execute a final order of removal, although the applicant may request an administrative stay of removal pursuant to [regulation]." 8 C.F.R. § 214.204(b)(2)(i). His application is pending, meaning that his assertions as to trafficking have not been corroborated, and his application has not been determined to be bona fide, which would result in an automatic stay. *Id.* § 214.204(b)(2)(iii).

Argument

I. The Court lacks jurisdiction to issue the relief requested.

A. Petitioner seeks relief that falls outside of the scope of habeas.

The relief Petitioner seeks is not available in a habeas case. Federal district courts may grant writs of habeas corpus if the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). As the United States Supreme Court has articulated, "[h]abeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Thus, a habeas proceeding's "fundamental purpose" . . . is to allow a person in custody to attack the "legality of that custody, and the traditional function of the writ is to secure release from illegal custody." *McIntosh v. U.S. Parole Comm'n,* 115 F.3d 809, 811 (10th Cir. 1997) (quoting *Preiser v. Rodriguez,* 411 U.S. 475 (1973)) (internal quotations omitted). While habeas offers relief from unlawful imprisonment or custody, it is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis. *Nguyen v. Noem*, No. 25-057-H, 2025 WL 2737803, at *7 (N.D. Tex. Aug. 10, 2025).

The United States Supreme Court recently analyzed the history and applicability of the writ of habeas corpus in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). It determined that the writ of habeas corpus "simply provided a means of contesting the lawfulness of restraint and securing release." *Thuraissigiam*, 591 U.S. at 117; (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) and noting "It is clear from the common-law history of the writ that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.") (cleaned up) *Id.* The Court in *Thuraissigiam* noted that the petitioner in that case had not requested release from custody (the traditional remedy), but rather "vacatur of his removal order and an order directing the Department to provide him with a new opportunity to apply for asylum and other relief from removal." *Id.* at 117-118. The Court held that such "relief falls outside the scope of the common-law habeas writ." *Id.* at 118.

Here, as in *Thuraissigiam*, Petitioner does not challenge the legality of his detention. Indeed, the result of his request, should it be granted, will ironically result in a *longer* detention. *See* 8 C.F.R. § 214.204(b)(2)(ii) ("If the applicant [for T nonimmigrant status] is in detention pending execution of the final order, *the period of detention . . . reasonably necessary* to bring about the applicant's removal *will be extended during the period the stay is in effect.*") (emphasis added). What he seeks instead is an Order from this Court staying his removal until certain administrative actions are taken. In other words, he challenges "Respondents' legal authority to deport [him] prior to the exhaustion of [his] legal right to [submit a stay of removal request]." *D.A.M. v. Barr*, 486 F. Supp. 3d 404, 420

(D.D.C. 2020) (finding that "*Thuraissigiam* forecloses petitioners' Suspension Clause argument" because they brought non-core habeas claims challenging authority to deport prior to seeking asylum).

Accordingly, "[t]he nature of the relief sought by [him] suggests that habeas is not appropriate . . . because the last thing [he] want[s] is simple release but instead a court order requiring the United States to shelter [him]." *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (internal quotations omitted). His requested relief is fundamentally different than that sought in a traditional habeas claim. As a result, "the common-law writ could not have granted Petitioner['s] requested relief," and "the Suspension Clause is not triggered here." *Hamama* 912 F.3d at875–76; *Mohit v. U.S. Dep't of Homeland Sec.*, 478 F. Supp. 3d 1106, 1112 (D. Colo. 2020) ("The Court finds that, pursuant to 8 U.S.C. § 1252 and *Thuraissigiam*, it does not have subject matter jurisdiction over this case under 28 U.S.C. § 2441."). Because Petitioner seeks relief the Court cannot grant, the Petition should be dismissed. *See Mohit*, 478 F. Supp. 3d at 1111-12(finding that there was no subject matter jurisdiction to hear petitioner's claims "[b]ecause the relief that petitioner seeks – a new credible fear interview and a stay of his deportation – is not relief that has been traditionally available via a writ of habeas corpus," and 8 U.S.C. § 1252(e) as applied did not violate the Suspension Clause).

B. Petitioner's request for a stay of his removal is precluded by Section 1252(g)'s jurisdiction stripping provision.

But even if this was the type of remedy a Court could hear and grant through § 2241, 8 U.S.C. § 1252 would strip the Court of such jurisdiction.

Congress passed the REAL ID Act ("Act") to limit judicial review of removal orders. "Congress's intent in enacting the REAL ID Act provisions at issue was to streamline judicial scrutiny of removal orders by consolidating those proceedings in one forum and to eliminate the possibility of piecemeal challenges." *Singh v. United States Citizenship & Immigration Servs.*, 878 F.3d 441, 446 (2d Cir. 2017), as amended (Jan. 9, 2018). The Act amended § 242 of the Immigration and Nationality Act ("INA"), 18 U.S.C. § 1252, specify the "sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with the appropriate court of appeals." 8 U.S.C. § 1252(a)(5). Critically, this limitation applies "[n]otwithstanding 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." *Id.* (emphasis added). Section 1252(g) was also amended to explicitly state that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g). Thus, by its plain language, § 1252 prevents Petitioner from challenging his removal order through a petition with this Court under habeas corpus or the All Writs Act. *See Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) ("Following enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal.") (citing *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006).

Issuing a "stay" of a removal order falls squarely within Section 1252(g)'s prohibitive purview. As previously recognized by the United States District Court for the

District of Massachusetts, "Congress made it quite clear that all court orders regarding alien removal—be they stays or permanent injunctions—were to be issued by the appropriate courts of appeals." *Tejada v. Cabral*, 424 F. Supp. 2d 296, 298 (D. Mass. 2006) (citing 8 U.S.C. § 1252(a)(2)(C). 8 U.S.C. §§ 1252(a)(2)(D), 1252(a)(5)). So, while that court noted it "properly has jurisdiction of his habeas petition," it found that the petitioner, "must therefore request a stay of his order of removal from the appropriate court of appeals." *Id.*

Other courts have agreed. *See Mapoy v. Carroll*, 185 F.3d 224, 227 (4th Cir. 1999) (holding that a noncitizen's claim for declaratory and injunctive relief was barred, reasoning that because he moved for a stay of removal, his motion *related* to the BIA's execution of a removal order); *Borjas-Borjas v. Barr*, No. 20-00417, 2020 WL 13544984, at *4 (D. Ariz. Oct. 6, 2020) ("Petitioner's claims challenge her removal from the United States before her motion to reopen has been adjudicated. Because her claims arise from Respondents' decision or action to execute her removal order, they are barred by 8 U.S.C. § 1252(g)."); *D.A.M.*, 486 F. Supp. 3d at 420 (finding that the Court lacked jurisdiction to order a stay due to the similar jurisdiction stripping provision of 8 U.S.C. § 1252(a)(2)(A) and that § 1252(e) did not separately authorize the claim).

Nor does the reason or basis for Petitioner's request for a stay impact the applicability of Section 1252(g). The fact that Petitioner is seeking a stay while he is attempting to adjust his status does not entitle him to seek relief here. In such circumstances, Section 1252(g) still applies to strip the Court of subject matter jurisdiction. *See Sheiko v. Giles*, No. 19-1859-JFW (KS), 2019 WL 7166059, at *5 (C.D. Cal. Oct. 18, 2019) ("To the contrary, the sole basis for the motion to reopen is that Petitioner can

establish *prima facie* eligibility for adjustment of status based on the approval of the I-130 Petition. Accordingly, the Court finds that Petitioner seeks a stay to litigate the merits of his removal order through a motion to reopen rather than to enforce his constitutional right to due process. Therefore, the Court finds that Section 1252(g) applies to strip the Court of subject matter jurisdiction in this matter.").

In one court, a United States District Judge who had initially granted a stay of removal, reversed course following the Supreme Court's *Thuraissigiam* case and granted a motion for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1, concluding that he would vacate and dissolve the stay of removal should the Circuit Court remand. *Ivan A. v. Anderson*, No. 20-2796 (KM), 2021 WL 858608, at *5 (D.N.J. Mar. 8, 2021). In that Order, the Court noted that, "[a]t least three Courts of Appeals have applied *Thuraissigiam* to bar petitioners' reliance on the Suspension Clause to preserve a district court's habeas jurisdiction over claims for relief other than "simple release" from unlawful detention. *Id.* at *4 (noting *E.F.L. v. Prim*, No. 20-1200, 2021 WL 244606, at *1 (7th Cir. Jan. 26, 2021), *Huerta-Jimenez v. Wolf*, 830 F. App'x 857, 858 (9th Cir. 2020), and *Gicharu v. Carr*, 983 F.3d 13, 20 (1st Cir. 2020)). That Court noted that it should not have "disregard[ed] the statutory jurisdiction-stripping provisions," and stated that the Supreme Court's *Thuraissigiam* case "render[ed] that stay invalid." *Id.* at *5. The Court further held:

> Habeas relief is release from custody. To deny *another* form of relief, such as a stay of removal, is not to deny habeas, and therefore the Suspension Clause is not implicated. What Petitioner sought (and received) here was not release from custody, but a stay of removal pending adjudication of his appeal to the BIA. Denial of such a stay is not a suspension of the writ of habeas corpus.

Id. at *5.

Petitioner seeks relief that would fundamentally interfere with the Respondents' ability to execute Petitioner's removal order. This Court accordingly lacks jurisdiction to give him the relief he seeks.

II. Petitioner has not shown that his detention violates the Suspension Clause.

The Petition is not a model of clarity as to the basis for the "violation of the Suspension Clause" claim. He asserts only that this constitutional provision "requires that habeas corpus be granted to allow for an answer to Petitioner's motion to reopen." Pet. at 12, ¶ 50. He thus appears to assert that the claimed violation would stem from his removal pending consideration of his motion to reopen his deportation proceedings. *Id.* ("This Court must stay Petitioner's removal to allow the Department of Justice to review his motion to reopen proceedings.").

The Suspension Clause prohibits the political branches from "suspend[ing]" the writ of habeas corpus "unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. CONST. art. I, § IX, cl. 2. In its recent *Thuraissigiam* opinion, the Supreme Court reserved the question of whether the Suspension Clause provides any protection beyond "the scope of the writ as it existed in 1789," *Thuraissigiam*, 591 U.S. at 116 n.12, but made clear that the Clause may not be used to "extend the writ of habeas corpus far beyond its scope when the Constitution was drafted and ratified." *Id.* at 107 (citation omitted).

With that as a starting point, the undersigned acknowledges Petitioner's citations to three Courts that have found that as applied to specific petitioners in specific

circumstances, Section 1252 has violated the Suspension Clause and thus issued stays as a "bridge" to adequate procedural reviews. *See, e.g., Sean B. v. McAleenan*, 412 F. Supp. 3d 472 (D.N.J. Sept. 3, 2019); *Compere v. Nielsen*, 358 F. Supp. 3d 170 (D.N.H. Jan. 24, 2019); *Devitri v. Cronen*, 289 F. Supp. 3d 287 (D.Mass Feb. 1, 2018). Critically, each of these cases cited by Petitioner were decided *before* the Supreme Court's *Thuraissigiam* case, decided on June 25, 2020. And indeed, the cases post-*Thuraissigiam* appear to lean on it to establish that such relief is inappropriate to pursue through a habeas petition. *See Ivan A.*, 2021 WL 858608, at *5(collecting three circuit court cases); *Smith v. Tsoukaris*, No. 21-11214 (KM), 2022 WL 17851952, at *1 (D.N.J. Jan. 28, 2022) ("Even assuming that this Court has jurisdiction to issue a stay . . . Petitioner has not provided any justification for the stay, or for a departure from the general principle that removal does not deprive a petition[er] of the ability to litigate a motion to reopen from abroad.") (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)); *Borjas-Borjas*,2020 WL 13544984, at *4 ("The relief Petitioner requests—a stay of removal to pursue the right to remain in the United States and "to obtain administrative review potentially leading to that result"—"falls outside the scope of the common-law habeas writ.") (citing *Thuraissigiam*, 140 S. Ct. at 1969-70.)

In any event, the cases cited by Petitioner are distinguishable from Petitioner's case here and, for the reasons addressed herein, this Court should decline to follow their lead. But should the Court entertain a "violation-of-suspension-clause" theory, other courts to have done so utilize the two-step analysis that the Supreme Court announced in *Boumediene v. Bush*, 553 U.S. 723 (2008). The principle part of that inquiry, is whether

the substitute for habeas is adequate and effective the Court first determines whether "Congress has provided adequate substitute procedures for habeas corpus." *Boumediene*, 553 U.S. at 771; *see Budiono v. Barr*, No. 19-01635, 2019 WL 5569182 at *2 (M.D. Pa. Oct. 29, 2019) (laying out the two-part inquiry in a similar context). When Congress has set for adequate procedures and an alternative remedy, it can strip jurisdiction without violating the Suspension Clause. *Swain v. Pressley*, 430 U.S. 372, 381 (1977).

The statutory framework provided by Congress provides Petitioner an adequate substitute for habeas corpus. *See Campbell v. Wolf*, No. 20-20216-CIV-JEM, 2020 WL 13548091, at *2 (S.D. Fla. Jan. 29, 2020). Petitioner has already filed a petition to reopen his removal proceedings, may appeal any decision to the BIA, and then further appeal any decision to the relevant court of appeals. "These procedures provide adequate protection to [Petitioner], as he has alternative methods of avoiding removal pending the [consideration of his] motion to reopen his removal proceedings." *Budiono*, 2019 WL 5569182, at *5. Indeed, Petitioner's Order of Removal was issued on May 29, 2013, and his appeal was dismissed on December 17, 2014. Milum Decl. ¶ 5. The Board's dismissal of the appeal was not appealed by the Petitioner. *Id.* "Petitioner cannot be seen to complain of an urgency of his own doing." *Campbell*, 2020 WL 13548091, at *3; *see also Majano Garcia v. Martin*, 379 F. Supp. 3d 1301, 13 07 (S.D. Fla. Nov. 14, 2018) (finding that the petitioner's case did not present "unique circumstances" when the case came 13 years after Petitioner failed to appear for his removal hearing, resulting in the order of removal which he now seeks to stay and which he never appealed to the United States Court of Appeals). Petitioner

has had "years to file [his] motion[] to reopen; [he] cannot now argue that the system gave [him] too little time." *Hamama*, 912 F.3d at 876.

And Petitioner states nothing that would suggest that his removal would prevent him from being able to pursue his motion from abroad, which was the basis for the issuances of stays in the cases cited by the Petitioner. Here, Petitioner gives no indication that he cannot effectively litigate his motion to reopen from Kenya. "This differentiates [Petitioner's] case from others where courts have found that threats to a petitioner render him unable to "effectively litigate an immigration appeal in the BIA or the Court of Appeals." *Budiono*, 2019 WL 5569182, at *5 (going on to distinguish *Sean B v. McAleenan*[3] and *Compere*). The cases cited to by Petitioner all involved concrete hindrances to those individuals' abilities to litigate their motions abroad. *See Sean B.*, 412 F. Supp. 3d at 475 (noting "under the peculiar circumstances" and going on to describe "that since his order of removal, his cooperation in testifying against a kingpin has exposed him to a realistic threat of being killed if he is returned to Jamaica" and that "his sister's

[3] The Petitioner in this case sought a second, subsequent stay following BIA's denial of his motion to reopen his removal proceedings. A different district court judge found that Petitioner's request to stay his removal so that his "second motion to reopen before the BIA can be considered by an Article III court" fell outside the court's jurisdiction given the appeals process available to him. *Sean B. v. Wolf*, No. 20-CV-550 (JGK), 2020 WL 1819897, at *1-2 (S.D.N.Y. Apr. 10, 2020). That Judge held specifically that "Section 1252 strips this Court of jurisdiction over the habeas petition." *Id.* at *1. It further noted, "[a]lthough the petitioner argues that he seeks not to nullify, but to stay, a removal order to protect his due process rights, a stay would render the removal order invalid and is an indirect challenge to the removal order." *Id.* (citing *Barros Anguisaca v. Decker*, 393 F. Supp. 3d 344, 349-50 (S.D.N.Y. 2019) (collecting cases)). Thus, even in these cases with egregious facts, a district court held that it was without jurisdiction to provide the requested relief.

house was burned down, the house of his children's mother was bombed, six of his cousins have been murdered, and his father was forced to flee the country."); *Compere*, 358 F. Supp. 3d at 182 ("Taken in combination — the possibility of detention while awaiting the drug task force, the potential that he will be detained in temporary housing if his uncle is unable to retrieve him, the security threats under which he will live when he is housed with Mr. Renois — the record demonstrates that, more likely than not, Compere would be unable to litigate his motion to reopen if he is removed to Haiti."); *Devitri*, 289 F. Supp. 3d at 291 (asserting, with the support of expert testimony, the fear of extremist religious persecution Petitioners may face).

And even those cases note that the "narrow, as-applied exception to the § 1252(g) bar has been recognized in the *very few cases* with comparable facts." *Sean B.*, 412 F. Supp. 3d. at 488 (emphasis added). These cases are clearly distinguishable from the facts here. There is no indication here of any specific threat to Petitioner, or that he will have to hide away in his home, unable to leave, contact the outside world, or travel freely. In short, there is simply no indication that he cannot effectively pursue a motion to reopen from Kenya. "Because [Petitioner] has adequate and effective alternatives to a writ of habeas corpus, as applied here, . . . the jurisdiction stripping provisions of Title 8 do not violate the Suspension Clause," and "[c]onsequently, the Court lacks jurisdiction to stay [his] removal. *Budiono*, 2019 WL 5569182, at *6.

The same logic applies to his attempts to file a motion to stay his removal. It appears he attempted to file a Form I-246, Application for Stay of Deportation or Removal on October 24 and 28, 2025. Milum Decl. ¶¶ 9-10. Each attempt, however, did not follow the

proper process. *See id.* ¶ 9 ("This filing was rejected due to insufficient payment and because it lacked a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative."); *id.* ¶ 10 ("This filing was rejected by the Wichita ERO sub-office because the Wichita ERO sub-office only accepts hand-delivered submissions."). As of the date of filling, "a Form I-246, Application for Stay of Deportation or Removal has not been properly submitted to ERO pursuant to 8 C.F.R. § 241.6." *Id.* ¶ 13. Petitioner has not shown that such relief is unavailable to him by simply stating that he has not been able to accomplish it within a period of a few days. Accordingly, Petitioner here does not and cannot show that habeas corpus has been suspended, either facially or as applied, because he has not successfully submitted a motion to stay his removal such that the Court should take jurisdiction over the Petition.

In summary, "The Suspension Clause of the Constitution does not vest the Court with jurisdiction despite Section 1252(g)." *Sheiko*, 2019 WL 7166059, at *6.

III. Invocation the APA, DJA, and the AWA is misplaced.

Petitioner asserts that his requested relief may be granted by this Court pursuant to the habeas corpus statute, 28 U.S.C. § 2241, the Declaratory Judgment Act ("DJA"), and the All Writs Act ("AWA"). Pet. at 3, ¶ 9. Further, Petitioner's Count 1, which asserts a "violation of the right to administrative remedies" and lists no jurisdictional basis, is presumably brought pursuant to the Administrative Procedure Act. For the reasons discussed above, the habeas statute does not provide the Court with jurisdiction over Petitioner's claims given the type of relief requested. Nor do any of these other statutes provide a vehicle for the requested relief in this habeas action.

Petitioner claims a violation of a "right" to administrative remedies but fails to articulate a basis for this Court's review. Pet. at 11, ¶¶ 47-49. The only waiver of sovereign immunity for such an assertion, however, is through the APA. Any such APA claim, however, suffers several infirmities, including the lack of final agency action, alternative adequate remedies at law, and the lack of jurisdiction given the failure to serve any respondent. And as a result, Petitioner's assertion of Declaratory Judgment Act and All Writs Act jurisdiction also fails.

The Court lacks jurisdiction to hear Petitioner's APA claim. First, the APA permits judicial review for "[a] person suffering legal wrong because of agency action," 5 U.S.C. § 702, that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *Id.* § 706(2)(A). However, the APA explicitly excludes any such review "to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." *Id.* § 701(a)(1)–(2). Petitioner's APA challenge falls under § 701(a)(1) because the Court is deprived of subject matter jurisdiction by virtue of 8 U.S.C. §§ 1252(a)(2)(B)(ii) and 1252(g) (stripping the district courts of jurisdiction to review claims regarding the execution of removal orders).

The claim also fails under § 701(a)(2) because the INA and relevant regulations make clear that entertaining a request for an administrative stay of removal is within the agency's discretion. 8 U.S.C. § 1227(d); 8 C.F.R. § 241.6. Indeed, courts that have considered habeas challenges to review a denial of a request for administrative stay have noted that a "refusal [to issue a stay] is a decision that is wholly within the discretion of the Attorney General." *Moussa v. Jenifer*, 389 F.3d 550, 553–54 (6th Cir. 2004). And still

others note that "such a discretionary decision is directly part of a decision to execute a removal order." *Id.* at 554 (citing *Sharif v. Ashcroft,* 280 F.3d 786, 787 (7th Cir. 2002) ("A request for a stay of removal arises from the Attorney Generals decision to execute a removal order.") and *Saccoh v. INS,* 24 F. Supp. 2d 406, 408 (E.D. Pa. 1998)).

Accordingly, to the extent that Petitioner intends to challenge anything related to the agency's discretion to consider a request for a stay of removal, the Court should decline to consider such challenge, as it lies squarely within the discretion of the agency.

Furthermore, this Court is without jurisdiction to order APA remedies because there has been no service of process. "Service of process, under longstanding tradition in our system of justice, is fundamental to any procedural imposition on a named defendant." *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). But the Petition has not been served pursuant to the Federal Rules. "In the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant." *Id.*; *see also Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.,* 484 U.S. 97, 104 (1987) ("Before a ... court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied."). Proper service has not occurred and, in fact, no summons have been issued.

The Respondents endeavor to comply with the Court's orders for response in habeas proceedings implicating liberty interests associated with shortened statutory response times authorized by statute and rule. *See, e.g.*, 28 U.S.C. § 2243; Rules Governing 2254 Cases. But Respondents have *not* waived service. That is especially true for non-habeas claims that do not enjoy statutory preference for ordering accelerated responses such as, for

instance, an APA claim. Indeed, even under Rule 4 of the Rules Governing 2254 Cases, there is improper service in this case. The habeas corpus procedure employed in this case does not waive the requirements of service of Petitioner's non-habeas claims. *See*, *e.g.*, *Qazza v. Att'y Gen. of United States*, No. 8:25CV116, 2025 WL 2731380 (D. Neb. Sept. 25, 2025) (requiring service of process for immigrant's APA claims to proceed); *Duwe v. Montgomery*, No. 3:25-CV-099, 2025 WL 2531358, at *1 (S.D. Ohio Sept. 3, 2025) ("[T]he Court could not consider declaratory relief without proper service or process."); *Xi-Amaru v. Xi-Amaru*, No. 1:22-CV-02089-LMM, 2022 WL 2389254, at *1 (N.D. Ga. June 17, 2022) (finding no jurisdiction on a motion for permanent injunction where the plaintiff had not filed proof of effective service on the defendant). Accordingly, the Court is without jurisdiction to award APA relief.

Finally, by the APA's terms, it is available only for "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704; *see also Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882 (1990) (explaining that an action under 5 U.S.C. § 702 must also satisfy the requirements of § 704). "As a general matter, two conditions must be satisfied for agency action to be 'final': First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (cleaned up). But Petitioner does not identify a final agency action. Rather, he seeks to ask the Court to *force* particular action—accept an incomplete application for stay. Therefore, APA relief is unavailable.

Given that the APA's waiver of sovereign immunity does not apply, Petitioner cannot resort to the Declaratory Judgment Act ("DJA") either. As the Tenth Circuit recently reaffirmed, "the DJA does not confer jurisdiction upon federal courts, so the power to issue declaratory judgments must lie in some independent basis of jurisdiction. Nor does the DJA provide a waiver of sovereign immunity." *Purgatory Recreation I, LLC v. United States*, No. 24-1241, 2025 WL 2958091, at *10 (10th Cir. Oct. 21, 2025) (cleaned up); *Devon Energy Prod. Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195, 1202 (10th Cir. 2012) ("the Declaratory Judgment Act does not confer jurisdiction upon federal courts, so the power to issue declaratory judgments must lie in some independent basis of jurisdiction") (quotation omitted).

Likewise, the express terms of the AWA confine courts to issuing process in aid of its *existing* statutory authority; "the Act does not enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 535 (1999). And specifically, "[The REAL ID] Act amended Section 1252 of Title 8 to make the repeal of general habeas jurisdiction over orders of removal absolutely unambiguous" and "added explicit references to ... the All Writs Act (§ 1651)." 14A Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Juris. § 3664 & n.41 (4th ed., updated 2019). Accordingly, the AWA provides no grant of jurisdiction or cause of action not already conferred.

In summary, no authority is conferred or available under these statutes for the relief Petitioner seeks. *See Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 699 (11th Cir. 2011) ("APA, mandamus, and declaratory jurisdiction are precluded by the jurisdiction-stripping provisions of the Immigration and Nationality Act."); *Campbell v.*

Wolf, No. 20-20216-CIV-JEM, 2020 WL 13548091, at *2 (S.D. Fla. Jan. 29, 2020) ("Accordingly, neither habeas corpus, the All Writs Act, the Declaratory Judgment Act, nor the Administrative Procedure Act provide the Court subject matter jurisdiction to adjudicate the Petition which seeks judicial review of his removal order."); *Mohit v. U.S. Dep't of Homeland Sec.*, 478 F. Supp. 3d 1106, 1112 (D. Colo. 2020).

Conclusion

The Petition should be denied.

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Respectfully Submitted,

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