IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JORGE LUIS SOTO VILCHEZ,

Petitioner,

v. Case No. 25-3234-JWL

PAMELA BONDI, U.S. Attorney General; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; TODD LYONS, Director, U.S. Immigration and Customs Enforcement; SAM OLSON, Acting Director of Enforcement and Removal Operations, St. Paul Field Office, U.S. Immigration and Customs Enforcement; and CRYSTAL CARTER, Warden, FCI-Leavenworth,

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Jorge Luis Soto Vilchez ("Petitioner"), an alien, for a writ of habeas corpus under 28 U.S.C. § 2241. The habeas petition comes to the Court in an unusual posture: Petitioner not only secured a stay of removal from an Immigration Court, but also successfully reopened his removal proceedings. This means Petitioner is no longer subject to a final order of removal, rendering all his habeas claims moot, unripe, or otherwise not cognizable. The petition should be dismissed on this basis alone.

Even if Petitioner's removal order somehow has not been vacated, his habeas claims lack merit. The United States was in the process of removing Petitioner to a third country (Mexico) due to an order withholding removal to his home country of Venezuela under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture ("CAT"). Petitioner asks the Court to release him from detention at the Federal Correctional Institution in Leavenworth, Kansas ("FCI-Leavenworth") based on the following allegations: (1) there is no significant likelihood of removal in the

reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001), in part because it will take time to complete credible fear proceedings for any third country, and detention is not necessary because Petitioner could be released on an order of supervision ("OSUP"); (2) these same circumstances are inconsistent with Petitioner's substantive due process rights under the Fifth Amendment to the Constitution; and (3) Petitioner has not received procedural due process under the Fifth Amendment because (a) the procedures for third country removals outlined in memoranda issued by the United States Department of Homeland Security ("DHS") are insufficient; and (b) Petitioner has not received a decision on his 90-day post order custody review ("POCR"), which review had to occur in or around July 2025. ECF 1 ¶¶ 81-110.

Count I should be denied under *Zadvydas* because Petitioner has not shown that removal is unlikely. To the contrary, Petitioner himself has argued before the Immigration Court that his removal to Mexico is imminent. The only reason Petitioner's removal has not been carried out is because he obtained a stay and he is now poised to litigate whether he can or should make a credible fear showing with respect to Mexico. Once the reopened Immigration Court proceedings have concluded and the stay is lifted, DHS will resume its efforts to remove Petitioner. Petitioner's assertion that the credible fear proceedings he himself initiated will take "too long" should be rejected. Similarly, Petitioner's assertion that he must be released from detention because the government has the option of an OSUP is not backed by case law and is inconsistent with the text of the Immigration and Nationality Act ("INA"). Count II fails because the lack of a viable *Zadvydas* claim precludes Petitioner's substantive due process claim.

Count III should be denied for multiple reasons. First, Petitioner's challenges to the third-party removal procedures set forth in memoranda issued by DHS are misguided. The only case cited by Petitioner that has sustained objections to these procedures is *D.V.D. v. U.S. Dep't of*

Homeland Sec., 778 F. Supp. 3d 355 (D. Mass. 2025). But the district court's orders in *D.V.D.* have no legal effect, as they have been stayed by the United States Supreme Court pending appeal to the First Circuit and any certiorari. This Court should not enter the *D.V.D.* fray until all appellate decisions have been rendered. Even if the Court were to address the issue, the procedures outlined by the district court in *D.V.D.* have been substantially followed in this matter, as Petitioner reopened Immigration Court proceedings to challenge his third country removal. Second, the INA strips the Court of jurisdiction to hear arguments based on the CAT, along with indirect challenges to Petitioner's third country removal. Third, DHS conducted a POCR and has prepared a written decision to continue Petitioner's custody. If any aspect of this POCR process did not comply with applicable regulations, the remedy is not to release Petitioner from custody. It is to provide substitute process.

STATEMENT OF FACTS

The following facts are part of the Declaration of Sydney Milum, a Deportation Officer for Enforcement and Removal Operations ("ERO") at United States Immigration and Customs Enforcement ("ICE"). Exhibit ("Ex.") 1, Milum Declaration ¶¶ 1-4. Some facts alleged in the habeas petition are included as well.

Petitioner is a native and citizen of Venezuela. *Id.* ¶ 5; *see also* ECF 1 ¶¶ 3, 21; ECF 1-5 at 4. He unlawfully entered the United States in August 2021 at or near San Luis, Arizona. Ex. 1 ¶ 6; *see also* ECF 1 ¶ 28. In October 2024, he was convicted in state court for criminal possession of a forged instrument in the second degree, in violation of Kentucky law. Ex. 1 ¶ 7; *see also* ECF 1 ¶ 31; ECF 1-8 at 1-4. He was sentenced to five years in prison for this offense, which sentence was probated. Ex. 1 ¶ 7; *see also* ECF 1-5 at 17; ECF 1-8 at 2.

In December 2024, Petitioner was taken into ICE custody following his release from state custody. *Id.* ¶ 8; *see also* ECF 1 ¶¶ 6, 32; ECF 1-7 at 1. Shortly thereafter, he was placed in removal proceedings through issuance of a Notice to Appear ("NTA"). Ex. 1 ¶ 9; *see also* ECF 1 ¶ 33; ECF 1-7 at 2-7. The NTA charged him as inadmissible to the United States pursuant to sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I) of the INA. Ex. 1 ¶ 9 (citing 8 U.S.C. §§ 1182(a)(6)(A)(i) & (a)(2)(A)(i)(I)).

On March 14, 2025, Petitioner filed an application for relief with the Immigration Court. *Id.* ¶ 10; *see also* ECF 1 ¶ 34. Petitioner alleges that he sought withholding of removal to Venezuela under 8 U.S.C. § 1231(b)(3) and the CAT. ECF 1 ¶¶ 3, 34. On April 23, 2025, the Immigration Court ordered Petitioner's removal but granted Petitioner's application for withholding of removal to Venezuela. Ex. 1 ¶ 11; *see also* ECF 1 ¶¶ 3, 35; ECF 1-1 at 1-4. No appeal was taken of the Immigration Court order by either party, which rendered the order final. Ex. 1 ¶¶ 11-13; *see also* ECF 1 ¶¶ 3, 36.

Following the Immigration Court's order of removal, ICE attempted to remove Petitioner to an alternative third country. Ex. 1 ¶ 16. However, on September 17, 2025, Petitioner filed with the Immigration Court a motion to reopen the proceedings and a motion to stay his removal, seeking to challenge his third country removal. *Id.* ¶ 17; *see also* ECF 1 ¶ 43; ECF 1-2 at 1-8; ECF 1-10 at 1-10. Petitioner alleges that he sought a stay of removal to Mexico because he fears persecution and torture there, as well as refoulement to Venezuela. ECF 1 ¶¶ 5, 43. On September 18, the Immigration Court granted the motion to stay removal and ordered Petitioner to apply for relief by October 9. Ex. 1 ¶ 18; *see also* ECF 1 ¶¶ 5, 44; ECF 1-3 at 1-2. On October 9, Petitioner submitted amendments to his prior application for relief, along with other supplemental documents. Ex. 1 ¶ 20; *see also* ECF 1-12 at 1-9.

Because of the stay of removal granted by the Immigration Court, ICE was awaiting a ruling on Petitioner's motion to reopen before proceeding with efforts to execute the outstanding removal order. *Id.* ¶ 21. While awaiting the Immigration Court's ruling on the motion to reopen, ICE Removal and International Operations ("RIO") headquarters advised it was working with the Department of State and DHS to be able to effectuate Petitioner's removal to a third country once the stay was lifted. *Id.* ¶ 22. On November 21, 2025, the Immigration Court granted Petitioner's motion to reopen the proceedings. *Id.* ¶ 23. As discussed below, this vacates the removal order than became final on April 23. *See infra* Argument § I. Petitioner is scheduled to appear before the Chicago Immigration Court on December 1. Ex. 1 ¶ 23. With Petitioner's case now reopened, ICE continues to wait before proceeding with efforts to execute any removal order. *Id.* ¶ 24.

Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien with a final removal order shall be removed from the United States within 90 days. *Id.* ¶ 14. If an alien has not been removed at or near 90 days after a removal order, ERO conducts a File Custody Review, also known as a POCR, to determine the necessity of continued custody. *Id.* When conducting a 90-day POCR, factors to be considered include a detained individual's flight risk, any danger the individual may pose to the community, any threat to national security, and whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.* Petitioner alleges the deadline to conduct his 90-day POCR under his now-vacated removal order was on or around July 22, 2025. ECF 1 ¶ 46. On or around October 8, ICE created and signed a Decision to Continue Detention letter stating a determination had been made that Petitioner would remain in ICE custody. Ex. 1 ¶ 19.

If an alien has been detained pursuant to a final removal order for 180 days, a Transfer Checklist generally is completed with information related to follow-up actions taken to obtain a travel document after the initial 90-day POCR and every 90 days thereafter. *Id.* ¶ 15. The Transfer

Checklist is transferred to the ICE/ERO Headquarters POCR Unit, which makes the ultimate decision on the individual's continued detention beyond 180 days, or every 90 days thereafter. *Id.* This decision is based on whether there is a significant likelihood of removal in the reasonably foreseeable future. *Id.*

THE *D.V.D.* LITIGATION

Because this case arguably implicates *D.V.D.*, 778 F. Supp. 3d at 355, a summary of that matter is warranted, even though the government does not agree with various trial court findings. On April 18, 2025, the district court presiding over the *D.V.D.* litigation certified a class and entered a preliminary injunction requiring the government to follow certain procedures before removing aliens to third countries. *Id.* at 364, 386, 392, 394. The district court certified the following class:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 378. The district court found that Executive Branch directives issued in February and March 2025 did not provide sufficient process to such aliens. *Id.* at 367-68, 384-85, 389-91.

In granting the motion for a preliminary injunction, the *D.V.D.* district court held the plaintiffs were "likely to succeed in showing that Defendants have a policy or practice of executing third-country removals without providing notice and a meaningful opportunity to present fear-based claims, and that such policy or practice constitutes a deprivation of procedural due process." *Id.* at 387, 390-91. The district court found that other preliminary injunction factors favored the plaintiffs as well, including irreparable harm and the balance of the equities or the "public interest." *Id.* at 391-92. The district court therefore ordered that:

> [P]rior to removing any alien to a third country, *i.e.*, any country not explicitly provided for on the alien's order of removal, Defendants 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.

Id. at 392-93. The government made several jurisdictional arguments in *D.V.D.*, all of which the district court rejected. *Id.* at 370-78.

After the government appealed the district court's decision in *D.V.D.* on April 22, 2025, the plaintiffs moved for a temporary restraining order ("TRO") preventing the government from removing aliens to third countries without the ordered procedures. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1323697, at *1 (D. Mass. May 7, 2025). The district court determined this relief was already provided by the existing preliminary injunction. *Id.* The district court later held a hearing, after which it found the government did not comply with the preliminary injunction by failing to provide six alien class members with a meaningful opportunity to present CAT claims before initiating removal to South Sudan. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *see also id.* (stating that an alien must be given at least 10 days to "raise a fear-based claim for CAT protection prior to removal"). The district court issued a separate order spelling out the remedy for this alleged non-compliance. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-10676-BEM, 2025 WL 1453604, at *1-2 (D. Mass. May 21, 2025).

Less than a week later, on May 26, 2025, the *D.V.D.* district court denied government motions for reconsideration and to stay the court's rulings pending appeal. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223, 227-36 (D. Mass. 2025). The district court reiterated that the

six class members in question had been placed on a plane with virtually no notice and "had no opportunity to learn anything about South Sudan, a nascent, unstable country to which the United States has recently told its citizens not to travel[.]" *Id.* at 233 (citation modified).

The government then applied to the Supreme Court for a stay of the *D.V.D.* district court's rulings pending an appeal to the First Circuit and any Supreme Court certiorari. On June 23, 2025, that application was granted. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2153 (2025). When the district court subsequently held that its May 21 remedial order remained in effect as to the six class members slated for removal to South Sudan, the government filed a motion with the Supreme Court seeking clarification. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025). On July 3, the Supreme Court granted the government's motion, holding that both the district court's April 18 preliminary injunction order and its May 21 remedial order were stayed and unenforceable. *Id.* at 2629-30.

ARGUMENT

28 U.S.C. § 2241(a) vests each district court with the power to grant a writ of habeas corpus. Such a writ "shall not extend to a prisoner" unless "[h]e is in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). The Court of Appeals reviews legal issues in connection with a § 2241 habeas petition *de novo*, while factual findings are reviewed for clear error. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1035 (10th Cir. 2012).

I. All Counts should be dismissed because Petitioner has reopened Immigration Court proceedings and is no longer subject to a final order of removal

"The finality of a removal order is not affected by the filing of a motion to reopen or reconsider." *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, at *8 (D. Kan. July 13, 2020) (citation modified); *see also Hango v. Nielsen*, No. 1:19-cv-606, 2020 WL 5642112, at *5

n.6 (N.D. Ohio Sept. 22, 2020) ("Of course, the filing of a motion to reopen does not affect the finality of an administratively final order of removal."). When a motion to reopen is granted, however, it "vacates the previous order of deportation or removal and reinstates the previously terminated immigration proceedings." *Nduala v. Hoover*, No. 1:19-cv-28, 2019 WL 3002955, at *3 (M.D. Pa. July 10, 2019) (citation modified); *see also Hango*, 2020 WL 5642112, at *5 n.6 ("It is only when a motion to reopen is *granted* that a final removal order is vacated."); *Al-Shewaily v. Mukasey*, No. CIV-07-0946-HE, 2007 WL 4480773, at *4 (W.D. Okla. Dec. 18, 2007) (agreeing that "an IJ's decision or granting of a motion to reopen removal proceedings vacates the previous removal order"); *Kabba v. Gonzales*, No. C06-1510-JLR-MJB, 2007 WL 1468830, at *4 (W.D. Wash. May 17, 2007) (citing authority for the proposition that "the grant of a motion to reopen renders a removal order non-final").

On the heels of an Immigration Court order staying removal, Petitioner's motion to reopen was granted on November 21, 2025. *See supra* Statement of Facts ("SOF"). Petitioner now lacks a final order of removal, making his habeas claims moot, unripe, or otherwise not cognizable. *Zadvydas* analyzes and authorizes relief based on portions of 8 U.S.C. § 1231(a) which are premised on a final removal order. *See, e.g., id.* § 1231(a)(1)(A) (referencing "when an alien is ordered removed"); *id.* § 1231(a)(1)(B) (noting one point at which the removal period may begin is "[t]he date the order of removal becomes administratively final"); *id.* § 1231(a)(6) (discussing "[a]n alien ordered removed" under certain conditions). As a result, all claims with any connection to *Zadvydas* should be dismissed:

> Respondent's Motion to Dismiss [#42] followed, arguing that the Supreme Court's decision in *Zadvydas*, the predicate for the relief Enwonwu seeks, is no longer applicable because Enwonwu is no longer subject to a final order of removal . . . . "*Zadvydas* concern[s] § 1231(a)(6), which authorizes the detention of aliens who have already been ordered removed from the country." *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018). Once the BIA granted Enwonwu's motion to reopen,

> Enwonwu's final removal order was vacated and therefore he has not been "ordered removed from the country." And, because the authorization for his detention therefore is no longer section 1231(a) . . . the relief Enwonwu seeks pursuant to *Zadvydas* and *Clark* is not available to him.

Enwonwu v. Souza, No. 17-cv-12555, 2019 WL 13280766, at *1-2 (D. Mass. Mar. 6, 2019); *see also Al-Shewaily*, 2007 WL 4480773, at *4-5 (conducting a *Zadvydas* review after a new order of removal was issued once reopened removal proceedings had concluded).

II. Count I should be denied under *Zadvydas* because Petitioner has not shown that removal is unlikely, or alternatively, Respondents can rebut any such showing

Under *Zadvydas*, upon the entry of a final removal order "the Government ordinarily secures the alien's removal during a subsequent 90-day statutory 'removal period,' during which time the alien normally is held in custody." 533 U.S. at 682. If the alien is not removed during this 90-day period, 8 U.S.C. § 1231(a)(6) "authorizes further detention." *Id. Zadvydas* held that a six month period of detention is presumptively reasonable. *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* The presumption does not mean that "every alien not removed must be released after six months," but instead that the alien may be held in confinement until "it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.*

Here, even if Petitioner's removal order were final, the claim for relief in Count I should be denied because he has not provided "good reason" to believe there is no significant likelihood of removal in the foreseeable future. For starters, Petitioner asserted Count I only a few days after passing the six-month mark. Petitioner's now-vacated removal order became final on April 23, 2025. *See supra* SOF. Petitioner submitted his habeas petition approximately 189 days later, on October 29. ECF 1 at 31. If the time Petitioner has spent seeking withholding of removal is

excluded, he has been in custody less than six months for *Zadvydas* purposes. His prior attempt to secure withholding of removal to Venezuela lasted approximately 40 days, from March 3 to April 23. *See supra* SOF. His current attempt to forestall or secure withholding of removal to Mexico has lasted approximately 70 days (and counting), beginning on September 17. *See id.*

The presumptively reasonable removal period under *Zadvydas* can be lengthened or "interrupted." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 n.4 (11th Cir. 2002). For instance, 8 U.S.C. § 1231(a)(1)(C) states the 90-day removal period shall be extended if the alien "acts to prevent the alien's removal subject to an order of removal." Courts have applied concepts of equitable tolling as well. *See Lawal v. Lynch*, 156 F. Supp. 3d 846, 849-50, 853-55 (S.D. Tex. 2016) (extending the six-month period where the petitioner sought withholding of removal); *see also Roman v. Garcia*, No. 6:24-CV-01006, 2025 WL 1441101, at *3 (W.D. La. Jan. 29, 2025) (stating that efforts by a petitioner to secure withholding or asylum "do not normally trigger the concerns raised by *Zadvydas*"). Either way, seeking withholding of removal interrupts "the running of time under *Zadvydas*." *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (citation modified).

In any event, Petitioner's order of withholding of removal to Venezuela does not make him unremovable. "[W]ithholding of removal is a form of country specific relief," so "nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531-32 (2021) (citation modified). Petitioner lacks competent evidence and expertise for his assertion that third country removals in 2025 are "incredibly rare." *See infra* Argument § V. Citing *Johnson*, 594 U.S. at 537, Petitioner observes the Supreme Court "previously noted that in 2017, only 1.6% of noncitizens who were granted withholding of removal (a form of relief with similar consequences to CAT)

were removed to an alternative country." ECF 1 ¶ 58. The respondents presented those statistics in *Johnson*, "point[ing] to one source claiming" to support the numbers. 594 U.S. at 537 (citation modified). The Supreme Court did not need to rely on the proffered statistics, holding that they were irrelevant to the pertinent issue of statutory interpretation (which issue was resolved in favor of the United States). *Id.* at 537-38. Even if this Court assumes the truth of the *Johnson* statistics, they are now approximately eight years old.

Whatever the statistics may show in the abstract, Petitioner has previously acknowledged that *his* removal is reasonably likely. Indeed, he had to make this concession to obtain relief from the Immigration Court. In September 2025, Petitioner filed an Immigration Court motion to stay his "imminent third country removal." ECF 1-2 at 1; *see also id.* at 2 ("Respondent seeks an emergency stay to prevent imminent removal to Mexico . . . ."); *id.* ("Mr. Soto Vilchez faces imminent removal to a non-designated third country . . . ."); *id.* at 5 ("Here, the risk of third country removal is imminent . . . ."); *id.* ("Mr. Soto Vilchez is at serious risk of removal to a third country . . . ."). This motion was granted. ECF 1-3. Petitioner simultaneously filed a motion with the Immigration Court to reopen his removal proceedings in which he reiterated "removal is imminent and could occur as early as Friday, September 19, 2025." ECF 1-10 at 3. In October 2025, Petitioner asked the Immigration Court to hold in abeyance his motion to reopen based on allegedly contradictory information from DHS about his removal. ECF 1-12 at 2-3.

The so-called "contradictory" information from DHS is nothing of the sort. Petitioner principally relies on a September 24, 2025, email from a Supervisory Detention and Deportation Officer in the Chicago Field Office stating "[i]t looks like DHS was looking into a third country removal, but you claimed fear on your client's behalf. DHS stopped pursuing a removal to a third country." ECF 1-13 at 24; *see also* ECF 1 ¶ 45 (quoting the email). This email did not mean DHS

had permanently ceased efforts to remove Petitioner to Mexico or another third country. It merely reflected ICE's compliance with the September 18 ruling of the Immigration Court, ordering that Petitioner's application for a stay of removal "be granted, to be effective until determination of the motion." ECF 1-3 at 1. While awaiting a ruling on the motion to reopen, ICE's RIO headquarters worked with DHS and the Department of State to prepare for Petitioner's eventual removal once the stay was lifted. *See supra* SOF. With removal proceedings now reopened, ICE continues to wait before making efforts to carry out any removal order. *See id.*

The foregoing factual summary reveals another reason why Petitioner's *Zadvydas* argument is unpersuasive. Petitioner claims that due process entitles him to an array of procedures before he and other aliens with deferral or withholding orders can be removed to third countries. Then Petitioner claims that when these procedures are provided, due process mandates his release (as well as the release of all other aliens with deferral or withholding orders) because his requested procedures will take a long time to complete. If Petitioner's position were accepted, it would mean he could engineer his own release by initiating the "time consuming" credible fear process with DHS or an Immigration Judge, just as he is doing here. That cannot be the law. Moreover, Petitioner's unsupported opinion that the supposedly required procedures will take too long to complete is just that – an unsupported opinion. *See infra* Argument § V.

Once his flawed procedural assertions are stripped away, Petitioner is left with the argument that removal to a third country is unlikely because it hasn't happened yet. That is not enough. *See Masih v. Lowe*, No. 4:24-CV-01209, 2024 WL 4374972, at *3 & n.32 (M.D. Pa. Oct. 2, 2024) ("[T]he fundamental basis of [petitioner's] argument appears to be that his removal is unlikely simply because it has not occurred to this point[.]") (citation modified). Stated differently, "[s]peculation and conjecture are not sufficient to carry this burden, nor is a lack of visible

progress" in Petitioner's removal "sufficient, in and of itself, to show that no significant likelihood of removal exists in the reasonably foreseeable future." *Tawfik v. Garland*, No. H-24-2823, 2024 WL 4534747, at *3 (S.D. Tex. Oct. 21, 2024) (citation modified). "Because ICE is still actively pursuing" his removal "and his detention furthers Congress's goal of ensuring his presence for removal," Petitioner is "not entitled to release under *Zadvydas*." *Bains v. Garland*, No. 2:23-cv-00369-RJB-BAT, 2023 WL 3824104, at *4 (W.D. Wash. May 16, 2023).[1]

In sum, even setting aside his non-finality problem, Petitioner has not shouldered his initial burden of proof under *Zadvydas*. As this Court recently held in a case bearing some similarities to the matter at hand:

> [T]he Court concludes that petitioner has not met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future. The mere fact that the requisite six months have now elapsed is not sufficient to meet that burden. Moreover, petitioner does not contend that officials have made no efforts to remove him to a third country; to the contrary, petitioner concedes in the petition that officials have made attempts to remove him to three alternative countries. In light of those efforts and the fact that petitioner's detention has lasted only slightly longer than six months since the beginning of the removal period, the Court cannot find that petitioner's detention has become unreasonably indefinite. The Court therefore denies the petition.

Reyna-Salgado v. Noem, No. 25-3172-JWL, ECF 6 at 4 (D. Kan. Oct. 3, 2025) (citation modified) (CourtLink copy attached as Ex. 2); *see also Gonzalez Olmedo v. U.S. Immigration & Customs Enf't*, No. 25-3159-JWL, 2025 WL 2821860, at *2 (D. Kan. Oct. 3, 2025) (similar); *Soudom v.*

[1] In the same vein, a "mere delay" in obtaining travel documents "does not trigger the inference that an [individual] will not be removed in the reasonably foreseeable future because the reasonableness of detentions pending deportation cannot be divorced from the reality of the bureaucratic delays that almost always attend such removals." *Dusabe v. Jones*, No. CIV-24-464-SLP, 2024 WL 5465749, at *4 (W.D. Okla. Aug. 27, 2024), *adopted*, 2025 WL 486679, at *1-4 (W.D. Okla. Feb. 13, 2025). Even when the Government "has not identified a specific date by which it expects a travel document to issue," it remains true that "uncertainty as to when removal will occur does not establish that detention is indefinite." *Atikurraheman v. Garland*, No. C24-262-JHC-SKV, 2024 WL 2819242, at *4 (W.D. Wash. May 10, 2024).

Warden, No. 25-3063-JWL, 2025 WL 1594822, at *2 (D. Kan. May 23, 2025) (denying relief where the petitioner did not carry his initial burden, in part because "[t]he letter on which petitioner relies does not foreclose the possibility of his removal"); *Ogole v. Garland*, No. 24-3198-JWL, 2025 WL 548452, at *2 (D. Kan. Feb. 19, 2025) (denying relief where the petitioner did not carry his initial burden by asserting "his country has a 'freeze on deportation,'" as this argument was "made without supporting evidence" and belied by other facts in the record).

Even if Petitioner had shifted the burden under *Zadvydas* (which he has not), the facts discussed above easily satisfy Respondents' rebuttal obligation. *See Abedi v. Carter*, No. 25-3141-JWL, ECF 11 at 4-5 (D. Kan. Oct. 6, 2025) (denying a habeas petition in part because "even in the few months since petitioner's detention, officials have been active in seeking petitioner's removal, and such activity changes the ultimate likelihood of petitioner's removal in the reasonably foreseeable future") (CourtLink copy attached as Ex. 3), *appeal filed*, ECF 13 (Oct. 6, 2025) (CourtLink copy attached as Ex. 4); *Soudom*, 2025 WL 1594822, at *2 (finding the respondents "sufficiently rebutted" any initial showing, in part because "immigration officials have diligently sought the necessary travel documentation for petitioner from South Africa since his detention"); *Drame v. Gonzales*, No. 16-3257-JWL, 2017 WL 978120, at *3 (D. Kan. Mar. 14, 2017) (finding the respondents met their burden "by showing that the Senegal Embassy now has issued the necessary travel document and that a tentative travel plan is in place to remove petitioner within this month").

Finally, the Court should reject Petitioner's novel claim that he cannot be detained under *Zadvydas* and principles of due process because any release would be supervised. ECF 1 ¶¶ 63-64, 91, 100. Petitioner cites no cases from the Tenth Circuit, this District, or anywhere else holding that detention is unlawful based on the mere possibility of an OSUP. That is surely because the

government has a degree of latitude in choosing between detention and an OSUP. As noted, 8 U.S.C. § 1231(a)(6) provides that if certain conditions are met, an alien "may be detained beyond the removal period and, *if* released, shall be subject to the terms of supervision in paragraph (3)" (citation modified). Section 1231(a)(3), in turn, states that an alien, pending removal, "shall be subject to supervision" under promulgated regulations (see, for example, 8 C.F.R. § 241.5, which sets forth regulations for "[c]onditions of release after the removal period").

Under Petitioner's theory, the detention option would be erased; an alien would always have a right to an OSUP. As discussed above, that is not what the statute says. The law also specifies that "[n]othing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person." 8 U.S.C. § 1231(h); *see also* 8 U.S.C. § 1231(a)(4)(D) (stating, in a section entitled "Aliens imprisoned, arrested, or on parole, supervised release, or probation," that no "cause or claim" may be asserted under this paragraph to compel "the release" or "consideration of release" of "any alien"). And once more, Petitioner's unsupported opinion that an OSUP would ensure his availability for removal is just that – an unsupported opinion. *See infra* Argument § V.

III. Count II should be denied because Respondents' compliance with *Zadvydas* means Petitioner cannot establish a substantive due process violation

Petitioner's substantive due process claim in Count II relies on the same essential allegations as his *Zadvydas* claim in Count I. *Compare* ECF 1 ¶¶ 81-91 *with id.* ¶¶ 92-100. Count II specifically cites *Zadvydas* and argues, among other things, that Petitioner's removal is unlikely because the United States cannot show "it will remove Mr. Soto Vilchez to an alternative country." *Id.* ¶¶ 96-99. Outside of *Zadvydas*, the habeas petition cites no substantive due process case law. Given the overlap between Petitioner's first two claims, the lack of a viable *Zadvydas* claim in Count I precludes the substantive due process claim in Count II. *See, e.g., Dusabe*, 2024 WL

5465749, at *5-6 ("Courts, including this one, have held that a petitioner's failure to establish that his detention violates *Zadvydas* negates a substantive due process claim.").

Many other cases support this conclusion. *See H.N. v. Warden*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *3 (M.D. Ga. Sept. 15, 2021) ("As for any separate substantive due process challenges to the length of his detention, *Zadvydas* forecloses those claims."); *Virani v. Huron*, No. SA-19-CV-00499-ESC, 2020 WL 1333172, at *7 & n.3 (W.D. Tex. Mar. 23, 2020) ("[T]he record does not support Petitioner's claim that his detention threatens to be either indefinite or potentially permanent so as to implicate *Zadvydas* and substantive due process concerns."); *Singh v. Barr*, No. 19-CV-732, 2019 WL 4415152, at *3 (W.D.N.Y. Sept. 16, 2019) ("Conversely, if detention is valid under *Zadvydas*, it cannot violate substantive due process."); *Jovel-Jovel v. Contreras*, No. H-18-1833, 2018 WL 11473467, at *4 (S.D. Tex. Oct. 30, 2018) ("[I]f detention is no longer than reasonably necessary to effectuate removal, it will comport with § 1231(a)(6), *Zadvydas*[,] as well as substantive due process protections.") (citation modified); *Nasr v. Larocca*, No. CV 16-1673-VBF(E), 2016 WL 2710200, at *5 (C.D. Cal. June 1, 2016) ("[W]here Petitioner has failed to meet his burden to show there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas*, Petitioner also has failed to prove that his continued detention violates due process.") (citation modified).

IV. Count III should be denied because the challenges to DHS third country removal procedures are misguided and Petitioner is receiving the process he claims is due

A. Petitioner's putative challenges to DHS memoranda should be rejected

1. The challenges are unsupported and foreclosed by the *D.V.D.* litigation

Petitioner's challenges to the memoranda issued by DHS in March and July 2025 relating to third country removals are factually unsupported. Petitioner did not attach copies of the memoranda to his habeas petition, opting instead to provide website links. ECF 1 ¶ 9 n.2; *id.* ¶ 11

n.3. The link to the March memorandum did not work when Respondents attempted to use it, and the link to the July memorandum leads to an unsigned document lacking attachments, one of which is supposed to be the March memorandum. Beyond that, the habeas petition contains no argument that the procedures set forth in the DHS memoranda are unconstitutional or otherwise illegal as applied to Petitioner. Rather, the habeas petition only provides blanket allegations that the practices prescribed by the memoranda "fail to follow statutory procedures outlined in the INA, the requirements of due process, and binding treaty obligations under the CAT[.]" *Id.* ¶ 65; *see also id.* ¶¶ 70-71, 104 (presenting similar allegations).

Petitioner's challenges to the March and July 2025 DHS memoranda are also legally unsupported. The only case cited by Petitioner that has sustained challenges to these procedures is *D.V.D.*[2] At this juncture, however, the district court's decisions in *D.V.D.* to enter a preliminary injunction and apply other remedial measures have no legal effect. After taking into consideration the district court's findings and conclusions, the Supreme Court stayed those orders pending an appeal to the First Circuit and any certiorari. *Dep't of Homeland Sec.*, 145 S. Ct. at 2153-63 (June 23, 2025); *Dep't of Homeland Sec.*, 145 S. Ct. at 2629-33 (July 3, 2025). As a result, the rulings and procedures ordered by the district court are unenforceable at this time. *D.V.D.* thus presents no barrier to Petitioner's continued detention at FCI-Leavenworth while DHS works through reopened Immigration Court proceedings and then (upon affirmation of the prior removal order or issuance of a new removal order) attempts to effectuate removal.

[2] In addition to being off point, some of the other cases cited in the habeas petition are red flagged on Westlaw. For example, Petitioner cites *Romero v. Evans*, 280 F. Supp. 3d 835 (E.D. Va. 2017). ECF 1 ¶ 68. The district court and appellate court decisions in *Romero* were reversed by the Supreme Court. *See Johnson*, 594 U.S. at 525-47.

Furthermore, even if the district court's preliminary injunction and remedial orders in *D.V.D.* were operative, there has been substantial compliance with those orders in this case. The district court's orders required (1) written notice to the alien and any counsel of an impending third country removal; (2) a meaningful opportunity with 10 days to raise credible fear claims under the CAT; (3) action by the government to reopen immigration proceedings upon a demonstration of reasonable fear; and (4) a meaningful opportunity with 15 days for the alien to seek to reopen immigration proceedings upon a negative fear determination. *D.V.D.*, 778 F. Supp. 3d at 392-93 (Apr. 18, 2025); *D.V.D.*, 2025 WL 145360, at *1 (May 21, 2025); *D.V.D.*, 2025 WL 1453604, at *1 (May 21, 2025). In the case at bar, Petitioner persuaded the Immigration Court to stay his removal. *See supra* SOF. He then successfully moved the Immigration Court to reopen his removal proceedings. *See id.* The parties are poised to litigate whether Petitioner can or should make a credible fear showing with respect to Mexico. *See id.* This scenario achieves the goals set by the *D.V.D.* district court when it specified the procedures it believed should be available to for third country removals.

Even if Petitioner had presented cognizable challenges to the March and July 2025 DHS memoranda (which he has not), the Court should not address them because doing so would run the risk of contradicting the ultimate decision of the First Circuit or the Supreme Court in *D.V.D.* This Court recognized as much in *Manago v. Carter*, No. 25-3183-JWL, 2025 WL 2576755 (D. Kan. Sept. 5, 2025). There, the petitioner filed a habeas petition and a TRO motion that "relie[d] heavily" on *D.V.D. Id.* at *1 (citation modified). The Court treated the TRO motion "as requesting only that limited relief regarding notice and an opportunity to object" to removal to Sudan, as the petitioner had an order withholding removal to that country. *Id.* So construed, the Court denied the TRO motion, in part because (1) the Court felt "it should refrain from issuing any injunction that

could ultimately conflict with the outcome" of *D.V.D.*; (2) the Court was "disinclined to issue the same injunction as the one issued by the *D.V.D.* court that already covers petitioner;" and (3) by issuing a stay, the Supreme Court in *D.V.D.* "sent a strong signal that temporary injunctive relief of the type sought here is not appropriate." *Id.* at *2-3.

2. Subject matter jurisdiction is lacking for challenges involving the CAT or seeking to regulate third country removal

Although Petitioner casts his habeas petition in terms of a supposed lack of due process relating to his *detention*, some of his arguments focus on alleged deficiencies relating to his *removal* to a third country. For instance, Petitioner alleges that the removal procedures outlined in the March and July 2025 DHS memoranda are insufficient and violate the CAT because, *inter alia*, they do not foreclose the possibility that Mexico or another a third country will engage in "chain refoulement" by returning him to Venezuela. ECF 1 ¶¶ 13, 65, 70, 76, 104-05. In substance, Petitioner seeks a judicial directive (based in part on CAT concerns) as to when and under what circumstances DHS can remove him to a third country. At least three sections of 8 U.S.C. § 1252 strip district courts of subject matter jurisdiction over such claims.

The first section is 8 U.S.C. § 1252(g). That portion of § 1252 states:

> (g) Exclusive jurisdiction
>
> 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.

Several courts have acknowledged that "§ 1252 does not bar habeas relief as to claims that are independent of a removal order," but courts have also held that "the jurisdiction-stripping provisions apply to *indirect* challenges to the merits of a removal order." *Gonzalez-Alarcon v. Macias*, 884 F.3d 1266, 1274-75 (10th Cir. 2018) (citation modified); *see also Abedi v. Carter*,

No. 25-3141-JWL, ECF 7 at 4 (D. Kan. Aug. 5, 2025) (citing this passage from *Gonzalez-Alarcon* with approval) (CourtLink copy attached as Ex. 5), *appeal filed*, ECF 13 (Oct. 6, 2025) (CourtLink copy attached as Ex. 4). Some of Petitioner's challenges to the DHS memoranda "in effect" ask to review, override, or regulate the execution of his now-vacated removal order, and the Court "lacks jurisdiction to do so." *Alegria-Zamora v. U.S. Dep't of Homeland Sec.*, No. 18-2102-DDC-GLR, 2018 WL 1138280, *2 (D. Kan. Mar. 2, 2018).

The second and third sections are 8 U.S.C. § 1252(a)(4) and (a)(5). These portions of § 1252 state:

> (4) Claims under the United Nations Convention
>
> 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, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).
>
> (5) Exclusive means of review
>
> 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, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of Title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Any CAT-reliant challenge to the procedures set forth in the DHS memoranda is jurisdictionally barred by § 1252(a)(4), and any challenge to carrying out a removal order using those DHS procedures is jurisdictionally barred by § 1252(a)(5). *See Kapoor v. DeMarco*, 132 F.4th 595, 608-09 (2d Cir. 2025) (holding, in a case involving extradition, that § 1252(a)(5) "precludes habeas

review of nearly all challenges to final orders of removal," while § 1252(a)(4) "bars *any* habeas review of CAT claims, unless specifically excluded, even beyond the review of final orders of removal"); *Benitez-Garay v. Dep't of Homeland Sec.*, No. SA-18-CA-422-XR, 2019 WL 542035, at *5-7 (W.D. Tex. Feb. 8, 2019) (concluding that provisions such as §§ 1252(a)(4) and (a)(5) foreclosed jurisdiction despite the petitioner's "attempt to classify his remaining claims as due process claims independent of the order of removal," because "due process challenges to the proceedings underlying removal orders do challenge the removal orders").

B. Petitioner received due process relating to his detention, and any regulatory deviation was harmless or can be remedied by substitute process

As alluded to in the SOF, the File Custody Review process is governed in part by 8 C.F.R. § 241.4. An initial 90-day custody determination normally is conducted by the relevant district director or the Director of Detention and Removal Field Office (collectively "Director"). 8 C.F.R. §§ 241.4(c)(1), 241.4(f)(1)-(8), 241.4(h)(1), 241.4(k)(1)(i). During the next 90-day period, the Director may "conduct such additional review of the case as he or she deems appropriate," "release the alien," or refer the alien to the Headquarters Post-Order Detention Unit for "further custody review." *Id.* §§ 241.4(c)(2), 241.4(k)(1)(ii), 241.4(k)(2)(i)-(ii). In the case before this Court, Petitioner's prior removal order became final on April 23, 2025. *See supra* SOF. ICE conducted a POCR and prepared a decision in October 2025 to continue Petitioner's detention. *Id.* ICE thus considered Petitioner's arguments against detention, and regardless, Petitioner no longer has a final order of removal. Any departure from § 241.4 was harmless.

Respondents acknowledge this Court has held that the lack of a custody decision "more than three months" after the deadline to conduct a POCR "effectively constitutes a denial of petitioner's right to that review, in violation of the applicable regulations." *Gonzalez Olmedo*, 2025 WL 2821860, at *3. But even if the Court deems the October 2025 custody decision untimely or

insufficient, the remedy is not to release Petitioner from FCI-Leavenworth. In the event of a deviation from the procedures set forth in 8 C.F.R. § 241.4, "the remedy for a procedural due process violation is substitute process." *Virani*, 2020 WL 1333172, at *12. As explained in *Virani*:

> Substitute process – as oppose[d] to release – as a remedy for a procedural due process violation also comports with the reasoning of the Supreme Court in the analogous context of the Bail Reform Act, which supplies the procedures for determining whether to detain a suspect in pretrial custody on federal criminal charges. The Supreme Court has made clear that the mere failure to comply with the time limitations set forth in the Act does not mandate release of a person who should otherwise be detained.

Id. (citation modified); *see also Gaona v. U.S. Dep't of Homeland Sec.*, No. 5-20-CV-00473-FB-RBF, 2020 WL 6255411, at *3 (W.D. Tex. Sept. 11, 2020) ("[T]he appropriate remedy for a procedural due process violation in these circumstances would not necessarily involve immediate release . . . . Instead, a successful procedural due process claim could very well result in Petitioners receiving additional process.") (citation modified).

In *Virani*, the respondents violated 8 C.F.R. § 241.4 by failing to conduct 90-day or 180-day POCRs. 2020 WL 1333172, at *9-11. In response, the *Virani* court set up an evidentiary hearing to take place in 60 days, so the court could consider (among other things) "any substitute process Petitioner receives between the date of this Order and the hearing[.]" *Id.* at *11-12. Likewise, in *Bonitto v. Bureau of Immigration & Customs Enf't*, 547 F. Supp. 2d 747 (S.D. Tex. 2008) the court found a procedural due process violation based on the respondents' failure to conduct a 180-day POCR. *Id.* at 756-58. Nevertheless, the *Bonitto* court only conditionally granted the habeas petition and afforded the respondents 60 days "within which to provide Petitioner a meaningful post-removal custody review[.]" *Id.* at 758. *Gonzalez Olmedo* adopted this analysis, concluding that "the appropriate remedy" for a violation of POCR regulations is substitute process. 2025 WL 2821860, at *3.

Courts have deemed other regulatory violations harmless and insufficient to warrant release as well, including failures to provide the "informal interview" referenced in 8 C.F.R. § 241.13(i). *See Nguyen v. Noem*, No. 6:25-CV-057-H, ECF 21 at 11, 14-15, 27 (N.D. Tex. Aug. 10, 2025) (holding that "even if the respondents did fail to abide by the procedural requirements" of § 241.13(i)(3), "any error was harmless. And even if it were harmful error, a writ of habeas corpus ordering his release would not be the appropriate remedy.") (CourtLink copy attached as Ex. 6); *Tanha v. Warden*, No. 1:24-cv-02121-JRR, 2025 WL 2062181, at *6 (D. Md. July 22, 2025) ("While the court appreciates that the informal interview has not been done (or scheduled, apparently), release from detention is an overreach and not the appropriate cure."); *Ahmad v. Whitaker*, No. C18-287-JLR-BAT, 2018 WL 6928540, at *5 & n.5 (W.D. Wash. Dec. 4, 2018) (finding there was "no apparent reason that ICE's failure to provide an informal interview should result in [the petitioner's] release") (citation modified). Petitioner's request in Count III to be released from detention based on a purported regulatory violation should be denied.

V. Petitioner did not verify and cannot verify many of the allegations in his request for habeas relief

The Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules") apply to petitions submitted under 28 U.S.C. § 2241. Habeas Rule 1(a) covers proceedings arising under § 2254, while Habeas Rule 1(b) states "[t]he district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."[3] Habeas Rule 2(c)(5), in turn,

[3] Citing 28 U.S.C. § 2243, Petitioner claims that Respondents were required by to respond to his request for relief "within 3 days, or no later than 10 days." ECF 1 ¶ 1 & Prayer For Relief ¶ 2. This Court correctly declined to impose such a schedule. ECF 3. Section 2243's "time limit for filing an answer (three days plus a maximum extension of 20 days) is subordinate to Habeas Rule 4, which contains no fixed time requirement but instead gives district courts considerable discretion in setting deadlines for responses to habeas petitions." *Bradin v. Thomas*, 823 F. App'x 648, 656-57 (10th Cir. 2020); *see also Harrison v. United States*, No. 5:17-444-KKC, 2017 WL 11708234, at *1 (E.D. Ky. Dec. 20, 2017) ("[T]o the extent [the petitioner] claims that 28 U.S.C. § 2243

requires a habeas petition "to be signed under penalty of perjury by the petitioner or by a person authorized to sign it for the petitioner under 28 U.S.C.A. § 2242." Neither Petitioner nor his counsel included a verification at the end of the habeas petition. ECF 1 at 31-32. Instead, buried in hundreds of pages of attachments are two sworn declarations from Petitioner. ECF 1-4; ECF 1-13. These declarations affirm some – but not all – of the allegations in the habeas petition.

Even if Petitioner's attached declarations could somehow serve as a proxy for the verification of the habeas petition contemplated by Habeas Rule 2(c)(5), they do not provide competent evidence for many of the factual issues raised. In general, a properly verified complaint "may be treated as an affidavit on summary judgment." *Janny v. Gomez*, 8 F.4th 883, 899 (10th Cir. 2021). But such an affidavit must comply with the personal knowledge requirement set forth in Federal Rule of Civil Procedure 56. *See* Fed. R. Civ. P. 56(c)(4) ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."); *see also* Habeas Rule 12 ("The Federal Rules of Civil Procedure, to the extent they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules."). Personal knowledge is also required by Federal Rule of Evidence 601. *Janny*, 8 F.4th at 899-900.

Petitioner does not have personal knowledge of many of the factual allegations in his habeas petition. Nor is he an expert witness entitled to opine on such matters. Among the assertions for which Petitioner lacks the requisite personal knowledge or expert qualifications are (1) it is

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requires this Court to 'forthwith' issue the writ or require the respondent to show cause why it should not be granted within three days, or no more than twenty days, this is simply not correct.") (citation modified); *Beaird v. Joslin*, No. 3:05-CV-1833-K (BH), 2006 WL 2473338, at *3 (N.D. Tex. Aug. 11, 2006) ("[T]he discretion accorded by Rule 4 of the Habeas Rules prevails over the strict time limits of 28 U.S.C. § 2243.") (citation modified).

"incredibly rare" for the United States to remove aliens to third countries, ECF 1 ¶¶ 13, 58; (2) no third country candidate (including Mexico) "could plausibly prevent" refoulement to Venezuela, *id.* ¶¶ 13, 76, 105; (3) comparable aliens have suffered "illegal repatriation," *id.* ¶ 13; (4) an email sent by a DO means "the process of third-country removal" for Petitioner was permanently "stopped," *id.* ¶¶ 45, 77; (5) an OSUP "would be sufficient" to ensure Petitioner remains available for removal, *id.* ¶¶ 64, 91, 100; and (6) the credible fear process for any third country for Petitioner will take "months if not years" to complete. *Id.* ¶¶ 79, 105.

Petitioner implicitly acknowledges he does not have personal knowledge of allegations like these. 28 U.S.C. § 1746 requires a declarant to state: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)." Recognizing he cannot in good faith aver he has personal knowledge or expertise on various topics, Petitioner added qualifying language that the statements in his declarations are true and correct "to my best knowledge and belief" (ECF 1-4 at 19) or "to the best of my knowledge and understanding" (ECF 1-13 at 18). That Petitioner lacks personal knowledge is also shown by his reliance on numerous news articles. *See* ECF 1-11 at 29-121; ECF 1-13 at 36-137. News articles are classic hearsay. *See New England Mut. Life Ins. Co. v. Anderson*, 888 F.2d 646, 650 (10th Cir. 1989) (affirming the exclusion of a news article on hearsay grounds); *Good v. Bd. of Cty. Comm'rs of Cty. of Shawnee, Kan.*, 331 F. Supp. 2d 1315, 1326-27 (D. Kan. 2004) (similar).

CONCLUSION

For the foregoing reasons, the habeas petition should be dismissed or denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 26, 2025, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will provide notice to all registered parties, including:

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