

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

MOHAMED IBRAHIM HASSAN,

Petitioner,

v.

Case No. 25-3239-JWL

JACOB WELSH, Warden, Chase County
Jail; SAM OLSON, Deputy Field Office
Director, Chicago Field Office, U.S.
Immigration and Customs Enforcement;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

This matter is before the Court on the petition of Mohamed Ibrahim Hassan (“Petitioner”), an alien, for a writ of habeas corpus under 28 U.S.C. § 2241. The United States is in the process of removing Petitioner to a third country because an Immigration Judge issued an order withholding removal to a particular nation under 8 U.S.C. § 1231(b)(3). The habeas petition should be denied.

Petitioner asks the Court to release him from detention at the county facility in Cottonwood Falls, Kansas (“Chase County Detention Center”) based on the following allegations: (1) Petitioner has not received substantive due process because there is no significant likelihood of removal in the reasonably foreseeable future under *Zadvydas v. Davis*, 533 U.S. 678 (2001), as it will take time to complete credible fear proceedings for a third country, and detention is not necessary because Petitioner could be released on an order of supervision (“OSUP”); and (2) Petitioner has not received procedural due process under the Fifth Amendment because the procedures for third country removals outlined in memoranda issued by the United States Department of Homeland

Security (“DHS”) are insufficient and inconsistent with the Convention Against Torture (“CAT”). ECF 1 ¶¶ 73-93. Both Counts fail to present cognizable claims for relief.

Count I should be denied under *Zadvydas* because Petitioner has not shown that removal is unlikely. Petitioner’s order of withholding does not make him unremovable, and there is no competent evidence that the third country removal process is unreasonably lengthy. DHS has acted diligently by attempting to remove Petitioner to four alternative countries since his order of removal became final. These efforts have not succeeded, but DHS is continuing to look for alternative countries and is working with the Department of State. 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 should be denied because 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. Furthermore, the INA strips the Court of jurisdiction to hear arguments based on the CAT, along with indirect challenges to Petitioner’s third country removal.

STATEMENT OF FACTS

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

Petitioner is a native and citizen of Kenya. *Id.* ¶ 5; *see also* ECF 1-5 at 2.¹ He initially entered the United States in September 2005 at or near Atlanta, Georgia. Ex. 1 ¶ 6; *see also* ECF 1 ¶ 25; ECF 1-5 at 2. In January 2007, he was granted lawful permanent resident status, retroactive to his initial date of entry. Ex. 1 ¶ 7; *see also* ECF 1 ¶ 25; ECF 1-5 at 2. In March 2019, he was convicted in state court for criminal attempt of receiving stolen property, in violation of Kentucky law. Ex. 1 ¶ 8; *see also* ECF 1-6 at 4, 47. He was sentenced to one year in prison for this offense. Ex. 1 ¶ 8; *see also* ECF 1-5 at 5.

The habeas petition acknowledges Petitioner's criminal history. Petitioner notes he previously pleaded guilty in Kentucky state court or Ohio state court not only to (1) attempting to receive stolen property, but also to (2) fleeing or evading police in the second degree; (3) possession of a forged device; (4) possession of marijuana; and (5) improperly handling firearms in a motor vehicle. ECF 1-6 at 2-4. In addition, Petitioner notes he was charged with (but not convicted of) separate counts in Kentucky state court or Ohio state court of (6) possession of a handgun by a convicted felon; (7) operating a motor vehicle with excessive window tint; (8) trafficking in financial information; (9) improperly handling firearms in a motor vehicle; (10) receiving stolen property; and (11) possession of marijuana. *Id.*

In or around October 2022, Petitioner was placed in removal proceedings through issuance of a Notice to Appear ("NTA"). Ex. 1 ¶ 9; *see also* ECF 1 ¶ 28; ECF 1-5 at 2-5. The NTA charged him as removable from the United States pursuant to section 212(a)(2)(A)(iii) of the INA for having committed an aggravated felony. Ex. 1 ¶ 9 (citing 8 U.S.C. § 1227(a)(2)(A)(iii)); *see also*

¹ Petitioner claims he is a citizen of Somalia, even though he was born in Kenya. ECF 1 ¶¶ 2, 18, 22. Petitioner's assertion is based on his reading of an alleged Kenyan citizenship law. *Id.* ¶ 22 n.3; ECF 1-3 at 2 ¶ 8. The analysis of Petitioner's legal claims does not depend on whether he is a citizen of Kenya or Somalia. *See infra* Argument §§ I-II.

ECF 1 ¶ 29; ECF 1-5 at 2-5. Petitioner alleges that the NTA was based solely on his conviction in Kentucky for attempting to receive stolen property. ECF 1 ¶ 29 & n.4; ECF 1-5 at 2, 5.

In or around January 2023, Petitioner moved to terminate removal proceedings, asserting he was not removable as charged. Ex. 1 ¶ 10. In February 2023, an Immigration Court granted his motion and terminated removal proceedings. *Id.* ¶ 11; *see also* ECF 1 ¶ 30. In March 2023, DHS appealed the Immigration Court's decision to the Board of Immigration Appeals ("BIA"). Ex. 1 ¶ 12; *see also* ECF 1 ¶ 31. On September 10, 2024, the BIA sustained DHS's appeal and remanded the case back to the Immigration Court for further proceedings. Ex. 1 ¶ 13; *see also* ECF 1 ¶ 35; ECF 1-10 at 2-7. Petitioner's appeal of the BIA's decision is currently pending before the United States Court of Appeals for the Seventh Circuit. ECF 1 ¶ 38 n.6.

On October 15, 2024, Petitioner filed an application for relief with the Immigration Court. Ex. 1 ¶ 14. Petitioner alleges the Immigration Court held a hearing on December 12 to consider his application for relief. ECF 1 ¶ 37. On December 19 (retroactive *nunc pro tunc* to December 12), the Immigration Court ordered Petitioner's removal but granted his application for relief. Ex. 1 ¶ 15; *see also* ECF 1-1 at 2-5. Petitioner avers that the Immigration Court granted his request for withholding of removal under 8 U.S.C. § 1231(b)(3), while his request for withholding under the CAT was withdrawn without prejudice. ECF 1-1 at 2. Petitioner alleges that the removal and withholding directives in the Immigration Court's order relate to Somalia. ECF 1 ¶¶ 37-38. No appeal was taken of the Immigration Court's order by either party, which rendered the order final. Ex. 1 ¶¶ 15-16; *see also* ECF 1 ¶¶ 2, 40.

Following the Immigration Court's December 2024 order, ICE has attempted to remove Petitioner to four alternative countries with no success. Ex. 1 ¶ 19. Petitioner asserts that those third countries included Canada, Belize, the Dominican Republic, and El Salvador. ECF 1 ¶ 44. In

July 2025, ERO reached out to ICE's Removal and International Operations ("RIO") headquarters to inquire about other potential third countries to which Petitioner could be removed. Ex. 1 ¶ 22. In September 2025, RIO advised that it is working with DHS and the Department of State to identify additional third countries for removal. *Id.* ¶ 23. ICE will continue its efforts to identify alternative countries to which Petitioner could be removed. *Id.* ¶ 24.

Pursuant to 8 U.S.C. § 1231(a)(1)(A), an alien who has been ordered removed shall be removed from the United States within 90 days. *Id.* ¶ 17. 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.*

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.* ¶ 18. 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.* On or around June 24, 2025, Petitioner was interviewed concerning his custody status. *Id.* ¶ 20. As of today's date, a decision on continuing detention has not been made by ERO. *Id.* ¶ 21.

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. 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, the claim for relief in Count I should be denied because Petitioner has not provided “good reason” to believe there is no significant likelihood of removal in the foreseeable future. For starters, the habeas petition overstates the amount of time Petitioner has been in custody for *Zadvydas* purposes. Petitioner attempted to terminate removal proceedings before and after he allegedly went into ICE custody on June 19, 2024. *See ECF 1 ¶¶ 4, 33.* Those efforts continued through September 10, 2024, when the BIA sustained DHS’s appeal and remanded the matter to the Immigration Court. *See supra* Statement of Facts (“SOF”). Then, from October 15, 2024, through December 12, 2024, Petitioner sought withholding of removal. *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 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 qualifies as an action that 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 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).² Petitioner lacks competent evidence and expertise for his assertion that third country removals in 2025 are "incredibly rare." ECF 1 ¶ 53. Citing *Johnson*, 594 U.S. at 537, Petitioner says only 1.6% of noncitizens who were granted withholding of removal were "actually removed to an alternative country." *Id.* 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 relate to 2017 and are now approximately eight years old.

Whatever the statistics may show in the abstract, Petitioner has not shown that *his* removal is unlikely. DHS has not been sitting on its hands. In the approximately 11 months since the Immigration Court's removal and withholding order became final, ICE has attempted to remove Petitioner to at least four alternative countries. *See supra* SOF. Those attempts have been unsuccessful, but ICE is continuing its efforts to identify third countries for removal. *Id.* To that

² Petitioner's assertion that the United States "cannot legally or plausibly remove him to an alternate country to which he has no ties" (ECF 1 ¶ 10) is incorrect. 8 U.S.C. §§ 1231(b)(1)(A)-(C) states that certain types of aliens are to be removed to the country in which they boarded a vessel bound for America, but if the country is unwilling to accept these aliens, they may be removed to an alternate country. 8 U.S.C. §§ 1231(b)(2)(A)-(E) states that other aliens who cannot be removed to the country of their choosing may be removed to an alternate country. 8 U.S.C. § 1231(b)(2) accounts for subsection (b)(3), which states an alien may not be removed to a country if "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

end, ICE's RIO headquarters reported in September 2025 that it was working with DHS and the Department of State to identify additional third countries. *Id.* Petitioner's unsupported opinion that the supposedly required procedures for third country removals will take too long to complete is just that – an unsupported opinion.

In essence, Petitioner is arguing 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).

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).

All of this means Petitioner has not shouldered his initial burden of proof under *Zadvydas*. See *Reyna-Salgado v. Noem*, No. 25-3172-JWL, ECF 6 at 4 (D. Kan. Oct. 3, 2025) (finding the petitioner had not “met his burden to show that there is no significant likelihood of removal in the reasonably foreseeable future,” in part because he conceded “officials have made attempts to remove him to three alternative countries”) (CourtLink copy attached as Ex. 2); *Soudom v. 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 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”).

It follows that Count I should be denied regardless of whether Petitioner characterizes it as sounding in substantive due process, procedural due process, or 8 U.S.C. § 1231(a)(6). See *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.”); *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).

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 ¶¶ 57-58, 82, 91. 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”). Once more, Petitioner’s unsupported opinion that an OSUP would ensure his availability for removal is just that – an unsupported opinion.

II. Count II should be denied because Petitioner’s challenges to DHS third country removal procedures are misguided

A. The putative challenges to DHS memoranda 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 ¶ 6 n.1; *id.* ¶ 8 n.2. The link to the March memorandum did not work when Respondents attempted to use it, and 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.* ¶ 59; *see also id.* ¶¶ 64-65, 86 (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.*³ 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 the Chase County Detention Center while DHS attempts to effectuate removal.

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

³ 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 ¶ 62. The district court and appellate court decisions in *Romero* were reversed by the Supreme Court. See *Johnson*, 594 U.S. at 525-47.

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.

B. 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. As noted, Petitioner alleges that the removal procedures outlined in the March and July 2025 DHS memoranda are insufficient because, *inter alia*, they violate his rights under the CAT. ECF 1 ¶¶ 59, 86. 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 existing 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 Petitioner’s existing 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”).

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 December 2, 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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