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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

EMAN ZAERI,

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

Case No. 2:25-cv-02219-CDS-NJK

Federal Respondents' Response to Petition for Writ of Habeas Corpus (ECF No. 1)

The Federal Respondents hereby submit this Response to the Verified Petition for a Writ of Habeas Corpus (ECF No. 1).

I. Introduction

Petitioner Eman Zaeri ("Zaeri" or "Petitioner") is a citizen of Iran who was arrested on June 25, 2025. Prior to this arrest, Zaeri entered the United States as a refugee on or about August 4, 2003, but he was later convicted for [redacted]

[redacted]

[redacted]

II. Facts

Zaeri is a citizen of Iran. He entered the United States as a refugee on or about August 4, 2003. Public reporting reflects that on or about [redacted] 2005, Zaeri allegedly [redacted]

Public reporting further reflects that he was charged with making threats [redacted] He pled guilty [redacted]

Zaeri was arrested by immigration authorities on June 25, 2025. He is currently detained pursuant to a final order of removal, and DHS/ICE has issued custody determinations reflecting that continued detention is warranted based on the applicable statutory and regulatory factors.

III. Legal Framework for Post-Order of Removal Detention, Release, and Revocation of Release

A. Statutory Framework

A removable noncitizen may be detained during their removal proceedings and after they receive an order of removal that becomes final. *See* 8 U.S.C. §§ 1225, 1226, 1231. The BIA's dismissal of an appeal, among other circumstances, renders an order of removal administratively final. *Rodriguez*, 2018 WL 1182179, at *1. Once a noncitizen becomes subject to an administratively final removal order, the authority for his detention shifts to § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021). Section 1231 establishes a 90-day "removal period." 8 U.S.C. § 1231(a)(1)(A). The removal period begins on the latest of the following: (i) the date the order of removal becomes administratively final, (ii) if the removal order is judicially reviewed and if a court orders a stay of the

removal of the alien, the date of the court's final order, or (iii) if the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement. 8 U.S.C. § 1231(a)(1)(B).

Under 8 U.S.C. § 1231, the Attorney General is required to detain noncitizens subject to such removal orders throughout the 90-day removal period. 8 U.S.C. § 1231(a)(1)–(2). Subsequently, a noncitizen ordered removed and determined by the Attorney General to be a "risk to the community or unlikely to comply with the order of removal, may be detained beyond the [90-day] removal period." 8 U.S.C. § 1231(a)(2), (6); 8 C.F.R. § 241.4(a)(1), (4).

In *Zadvydas v. Davis*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) to limit a noncitizen's detention beyond the removal period to the period "reasonably necessary to bring about the alien's removal from the U.S." 533 U.S. 678, 689 (2001). The Court held that a period of six months from the date the removal order becomes final is presumptively reasonable. *Id.* at 701. But the Supreme Court cautioned that the "presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* at 695. To the contrary, an 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.*

B. Regulatory Framework

The Code of Federal Regulations sets forth specific provisions regarding the release and revocation of release of a noncitizen with a final order of removal. Specifically, 8 C.F.R. § 241.4 is entitled "Continued detention of inadmissible, criminal, and other aliens [noncitizens] beyond the removal period" and relates to the release (and the revocation of release) of such noncitizens. Generally, regulations grant authority to designated officials with ICE (formerly the Immigration and Naturalization Service) to grant release or parole

to a noncitizen, and the agency may continue a noncitizen's custody under the provisions of the C.F.R. 8 C.F.R. § 241.4(a).

Revocation of release is governed by 8 C.F.R. § 241.4(l). This can occur for two reasons: the noncitizen violates the conditions of release, § 241.4(l)(l), or ICE determines in its discretion to revoke release, § 241.4(l)(2). If release is revoked due to a violation of conditions under § 241.4(l)(1), the noncitizen must be notified of the reasons for revocation and afforded an initial informal interview promptly after his return to custody, to afford the noncitizen an opportunity to respond to the reasons for revocation stated in the revocation of release notification. 8 C.F.R. § 241.4(l)(1).

The regulation providing for revocation of release in the discretion of ICE has no such language requiring notice of the reason for revocation or for an informal interview upon being taken into custody. 8 C.F.R. § 241.4(l)(2). Factors allowing for the revocation of release in the discretion of ICE include: (1) the purpose of the release has been served; (2) the noncitizen violated a condition of release; (3) *revocation is appropriate to enforce a removal order* or to commence removal proceedings; and (4) the conduct of the noncitizen, or any other circumstance, indicates release would no longer be appropriate. 8 C.F.R. §§ 241.4(l)(2)(i–iv).

DHS has also enacted special regulations for noncitizens who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed . . . in the reasonably foreseeable future." 8 C.F.R. § 241.13(a). Pursuant to that regulation, DHS will release a noncitizen who has made such a showing, subject to appropriate conditions of release. 8 C.F.R. § 241.13(g)(1). Similar to the regulations described above, § 241.13 provides for the revocation of release if ICE

determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2).

IV. Argument

C. Zaeri's due process rights were not violated by being taken back into custody for purposes of removal

Zaeri's due process rights were not violated by the revocation of his release to execute his valid removal order. The Due Process Clause does not protect a "benefit . . . if government officials may grant or deny it in their discretion." *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 756 (2005); *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 462-63 (1989); *see Olim v. Wakinekona*, 461 U.S. 238, 249 (1983). The safeguards of the Due Process Clause are not implicated unless the petitioner has been deprived of a constitutionally protected liberty or property interest. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). Such an interest can be created by the Due Process Clause itself, or by an independent source such as federal statutes or regulations. *See, e.g., Town of Castle Rock,* 545 U.S. at 756; *Sealed v. Sealed*, 332 F.3d 51, 55 (2d Cir. 2003).

In order for a statute or regulation to create a vested liberty interest, it must confer an entitlement to the relief. *Handberry v. Thompson*, 446 F.3d 335, 353 (2d Cir. 2006). That is, the law must place "substantive limitations on official discretion." *Olim v. Wakinekoma*, 461 U.S. 238, 249 (1983); *see also id.* ("If the decisionmaker is not 'required to base its decision on objective and defined criteria,' but instead 'can deny the requested relief for any constitutionally permissible reason or for no reason at all,' the State has not created a constitutionally-protected liberty interest" (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 358, 466–67 (1981) (Brennan, J., concurring))). There is no constitutionally protected interest if the law permits government officials to grant or deny the benefit in their discretion. *Town of Castle Rock,* 545 U.S. at 756.

Supreme Court's holdings have been applied on the reach of the Due Process Clause in the particular context of discretionary relief for noncitizens subject to final orders of removal and recognized that "[a]liens who seek only discretionary relief from deportation have no constitutional right to receive that relief." *Hernandez v. Gonzales*, 437 F.3d 341, 346 (3d Cir. 2006) (noting "aliens must in the first instance possess a liberty or property interest"). In this instance, revocation of release is explicitly governed by 8 C.F.R. § 241.4, which states that ICE "shall have authority, *in the exercise of discretion*, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section." 8 C.F.R. § 241.4(l)(2) (emphasis added). Thus, no due process violation occurred by Zaeri's re-detention. Likewise, as explained below. Zaeri's continued detention for purposes of executing his removal order is not a violation of due process.

i. Respondents did not violate any statutory or regulatory requirements, and thus no Administrative Procedure Act claim can stand

Zaeri argues that ICE failed to comply with regulations in revoking his release, resulting in a violation of the Administrative Procedure Act ("APA"). ECF No. 3-1, at 16–18. This is incorrect.

As an initial matter, this Court lacks jurisdiction to consider Zaeri's claim under the APA. The APA permits judicial review for "[a] person suffering legal wrong because of agency action," 5 U.S.C. § 702, and provides that an agency action is reviewable if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* at § 706(2)(A). However, the APA explicitly excludes any such review "to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law." *Id.* § 701(a)(1)–(2). Zaeri's APA challenge to ICE's discretionary decision to revoke his supervision fails under the first clause of § 701(a)(1) because the Court is deprived of subject matter jurisdiction by virtue of 8 U.S.C. § 1252(a)(2)(B)(ii). *See, e.g., Bernardo ex rel. M&K Eng'g, Inc. v. Johnson*, 814 F.3d 481, 485 (1st Cir. 2016) (holding that the judicial review

bar at § 1252(a)(2)(B)(ii) applied as a result of statutory terms suggesting a grant of administrative discretion).

Zaeri's action also fails under the second clause of § 701(a) because the INA and relevant regulations make clear that revocation of supervised release is within the agency's discretion. *See* 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 241.4(l)(2). Indeed, courts that have considered habeas challenges to post-removal-order orders of supervision have afforded administrative authorities "wide latitude" to impose such orders. *See, e.g., Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 528 (S.D.N.Y. 2009) (citing cases). Accordingly, to the extent that Zaeri challenges the substance of ICE's discretionary decision with regard to his order of supervision (*i.e.*, to revoke it and re-detain him), the Court should decline to consider such challenge, as it lies squarely within the discretion of the agency.

Zaeri's argument also fails on its own terms. To begin, Zaeri's release occurred one day after he was ordered removed and DHS reserved an appeal. The Petition states: "[Zaeri] was ordered removed by an Immigration Judge on August 18, 2020 . . . [and] was released under an Order of Supervision (OSUP) on August 19, 2020. ECF No. 3-1, at 2. Notably, Exhibit A shows that DHS had reserved its appeal, and even so they decided to release Zaeri within a day of his removal order. Exhibit A. Because Zaeri's release was discretionary and not because of "no significant likelihood of removal to the country to which he or she was ordered removed" (*see* 8 C.F.R. §§ 241.13(a), (h)(2)), the regulatory provision applicable to revocation of his release is 8 C.F.R. § 241.4.

Section 241.4 sets forth two provisions for the revocation of release: § 241.4(l)(1), where revocation is a result of a violation of some condition of the release, and § 241.4(l)(2), where revocation is at the discretion of ICE, including when appropriate to enforce a removal order against an alien.

While § 241.4(l)(1) states that "[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification," § 241.4(l)(2) contains no such language. Upon information and belief, Zaeri's re-detention was driven

with the intent to enforce a removal order against Zaeri, at least for the reasons stated in the decision to continue detention: "removal expected to be effected within reasonable foreseeable future," "[Zaeri] [p]ose[s] a danger to the community, to the safety of others persons, or property," and "[Zaeri] [p]ose[s] a significant risk of flight pending [his] removal from the United States." ECF No. 1-4, at 1. Notably, ICE has determined that Zaeri "has been convicted [redacted], which denotes a propensity towards violating the laws that govern this country and the community." ECF No. 1-4, at 1.

ii. Zaeri's detention accords with 8 U.S.C. § 1231(a)(6) and does not violate his due process rights

Zaeri is detained under 8 U.S.C. § 1231(a)(6), which "governs the detention, release, and removal of individuals 'ordered removed.'" *Johnson v. Arteaga-Martinez*, 142 S. Ct. 183, 1832 (2022) (quoting 8 U.S.C. § 1231(a)(1)(A)). As noted above, "[a]fter the entry of a final order of removal against a noncitizen, the Government generally must secure the noncitizen's removal during a 90-day 'removal period.'" *Id.* (citing 8 U.S.C. § 1231(a)(1)(A)). Detention is mandatory during the 90-day removal period. 8 U.S.C. § 1231(a)(2). *Zadvydas* recognized a "presumptively reasonable" removal period of six months. *Id.* "This 6-month presumption, of course, does not mean that every alien not removed must be released after six months." *Id.* "To the contrary, an 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.*

Thus, it is a petitioner's burden to show—after the presumptively constitutional six-month period elapses—that his detention has "become prolonged and potentially unlawful," and specifically that there is "'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Grant v. Warden of Clinton Cnty. Corr. Facility*, 2022 U.S. Dist. LEXIS 137402, at *6 (M.D. Pa. Aug. 2, 2022) (quoting *Johnson v. Guzman Chavez*, 594 U.S. 2271, 2282 (2021)); *Francis S.M. v. Decker*, 2020 U.S. Dist. LEXIS 71520, at *9 (D.N.J. Apr. 23, 2020) (quoting *Alexander v. Att'y Gen.*, 495 F. App'x 274, 276 (3d Cir. 2012)). When a noncitizen cannot "produce evidence demonstrating good cause to believe

that there is no significant likelihood of removal in the reasonably foreseeable future, courts have sustained continuing periods of detention pending removal well beyond" the presumptively reasonable six-month period. *Kamara v. Warden*, 2021 U.S. Dist. LEXIS 94222, at *26–27 (M.D. Pa. Apr. 12, 2021) (collecting cases).

Moreover, "an alien cannot simply rely on the passage of time to meet his burden; rather, there must be some indication that the government is either unwilling to remove an alien or there are seemingly insurmountable barriers . . . ." *Gathiru v. Banieke*, 2016 U.S. Dist. LEXIS 150040, at *4 (D. Minn. Oct. 27, 2016) (cleaned up). By way of further example, "[c]ourts have found that removal was not 'reasonably foreseeable'" when "no country would accept the detainee, the country of origin refused to issue proper travel documents, the United States and the country of origin did not have a removal agreement in place, or the country to which the deportee was going to be removed was unresponsive for a significant period of time." *Tshiteya v. Crawford*, 2013 U.S. Dist. LEXIS 176987, at *12 (E.D. Va. Dec. 16, 2013) (citing *Nma v. Ridge*, 286 F. Supp. 2d 469, 475 (E.D. Pa. 2003)).

Here, even assuming that Zaeri's detention falls outside the 90-day removal period and the 6-month period considered presumptively reasonable under *Zadvydas*, he cannot carry his burden of establishing good reason to believe that there is no significant likelihood of his removal in the reasonably foreseeable future.

Under *Zadvydas*, the burden initially rests with the detainee to provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S. at 701. This showing must be supported by affirmative evidence; conjecture or speculation is insufficient.

Zaeri has made no such showing. He does not allege that any foreign government has refused to accept him, that DHS has been unable to obtain travel documents, or that removal efforts have ceased. Nor does he allege that his own actions have facilitated removal. Courts have repeatedly held that where a detainee fails to demonstrate that repatriation or third-country removal is foreclosed, the *Zadvydas* standard is not satisfied.

The fact that DHS has not yet identified a specific third country does not alter this conclusion. *Zadvydas* does not require the government to show that removal is imminent or that a receiving country has already been secured; it requires only that removal be significantly likely in the reasonably foreseeable future. 533 U.S. at 701. Courts have consistently rejected the argument that the absence of an identified third country, standing alone, establishes no likelihood of foreseeable removal.

Further, it is public knowledge that the United States, as recently as September 30, 2025, deported a planeload of Iranians back to Iran from the United States after a deal between the two governments.[2] This means that obtaining travel documents to remove Iranian nationals is not foreclosed. Further, as the U.S. District Court for the District of Kansas articulated on October 6, 2025, "Respondents have submitted evidence that Iran has indicated to immigration officials that it is willing to issue a travel document . . . if needed." Exhibit B, at 4. The United States thus has the capability of obtaining travel documents for Iranian nationals and removing them to Iran or third countries, as needed. Tanahan's assertions are thus misinformed and are simply misleading to this Court.

Further DHS instructed Zaeri of his legal obligation to make timely application in good faith for travel or other documents to assist in facilitating his removal, while warning him of the consequences of failing to comply. ECF No. 1-3. DHS subsequently instructed Zaeri that he was required to demonstrate that he was making reasonable efforts to comply with his order of removal and to cooperate with DHS's efforts to facilitate his removal by taking whatever actions DHS requested of him to effect removal and, repeatedly, warned him of the legal consequences for failure to comply. Despite these warnings, Zaeri has repeatedly failed or refused to engage in good faith efforts to facilitate his removal from the United States. As a result, the Court should rule that Zaeri is lawfully detained under 8 U.S.C. § 1231(a)(1)(A). *See* 8 U.S.C. § 1231(a)(1)(C); *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2281 (2021) ("[T]he removal period may be extended if the alien fails to make a

[2] *See* https://www.nytimes.com/2025/09/30/world/middleeast/us-iran-deportation-flight.html (last visited on November 18, 2025).

timely application for travel documents or acts to prevent his removal."); *Brown*, 2020 WL 1488166, at *1; *Cyclewala v. Feely*, 2021 WL 307563, *4 (W.D.N.Y. Jan. 29, 2021) (finding that 8 U.S.C. § 1231(a)(1)(C) applies where "it is clear that the present difficulty in verifying Petitioner's identity and thus obtaining travel documents is a direct consequence of Petitioner's own actions").

Here, DHS is actively processing Zaeri for third-country removal. Ongoing efforts to effect removal—whether through repatriation, appeal-related proceedings, or third-country options—are sufficient to defeat an SLRRFF claim at this stage. *Zadvydas* does not require DHS to demonstrate certainty of removal, only that removal is not speculative or remote. Because Zaeri has failed to meet his initial burden under *Zadvydas*, the burden never shifts to the government to rebut his claim. His detention therefore remains lawful under § 1231(a)(6), and his petition fails as a matter of law.

Moreover, as courts have recognized, 8 C.F.R. § 241.4, the regulation governing post-order custody review of noncitizens detained pursuant to 8 U.S.C. § 1231, satisfies the requirements of procedural due process. *See, e.g.*, *Boachie-Danquah v. U.S. Att'y Gen.*, No. 1:17-cv-641, 2018 WL 868769, at *4 (S.D. Ohio Aug. 24, 2017) ("the post-order custody review satisfies due process requirements"); *Boamah v. United States*, No. 1:16-cv-1154, 2017 WL 6016640, at *3 (S.D. Ohio Aug. 24, 2017), *supplemented*, No. 1:16-cv-1154, 2017 WL 6015809 (S.D. Ohio Sept. 5, 2017 (same); *Odogwu v. Holder*, No. 1:10-cv-2292, 2011 WL 846145, at *3 (M.D. Pa. Feb. 15, 2011) (same).

Consistent with § 241.4, Zaeri has received a custody review during his current detention, which determined based on a review of his file and the relevant factors that he would continue to be detained because he was a threat to public safety and had a final order of removal. ECF No. 1-4. ERO's Decision also noted that a future custody review would be provided. Thus, by conducting the periodic custody reviews required under 8 C.F.R. § 241.4, ICE has further protected Zaeri's liberty interest, undermining his due process claim. For all these reasons, Zaeri's due process challenge to his detention fails.

To the extent Petitioner believes ICE should have provided him with advance notice of its intent to revoke his release, such belief is not grounded in regulation or the Constitution. ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that it could encourage flight or increase law enforcement safety concerns. *See Doe v. Smith*, No. 18-cv-11363-FDS, 2018 WL 4696748, at *7 (D. Mass. Oct. 1, 2018) (explaining that the "regulation does not require that a petitioner or her counsel be given 30 days' notice prior to the initial informal interview."); *see also Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) (finding no "due process right to not be snatched off the street without warning" when ICE revoked discretionary parole and returned individual to custody); *Reyes v. King*, No. 19-cv-8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021) (explaining that "the Due Process Clause of the Fifth Amendment does not entitle [p]etitioner to such a [pre-detention] hearing at this specified time, and [p]etitioner cites no authority within this Circuit that counsels otherwise."); *Moran v. U.S. Dep't of Homeland Sec.*, No. 20-cv-696-DOC-JDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (expressing skepticism about "the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.").

Courts routinely conclude that compliance with the POCR regulations protect an individual's constitutional rights while detained while executing a removal order. *See, e.g.*, *Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) ("When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive the process that is constitutionally required."); *Portillo v. Decker*, No. 21-cv-9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting the conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not "cite[d] legal authority in support of his generalized laments about the administrative process").

Because Petitioner does not demonstrate that ICE violated any specific procedures under the applicable regulations—§ 241.4/§ 241.13—his petition should be denied. *See, e.g.*,

Perez v. Berg, No. 24-cv-3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted,* No. 24-cv-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no due process violation "[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way"); *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews).

D. Zaeri's Equal Protection Claim Fails Because the INA Bars the District Court From Review

Zaeri alleges that his detention violates the equal protection principles of the Fifth Amendment because he alleges that Federal Respondents' decision to arrest and detain him was motivated by his Iranian nationality. Zaeri's equal protection claims fail, however because a challenge on that basis is *exactly* what 8 U.S.C. § 1252(g) bars—as the Supreme Court held in *Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 (1999).

In § 1252(g), Congress provided that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings … against the alien," "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. By its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 of claims arising from a decision or action to commence removal proceedings. *See Reno v. American-Arab Anti-Discrimination Comm. ("AADC")*, 525 U.S. 471 482 (1999). The statute does not turn on how a petitioner characterizes the enforcement action at issue, but on whether the claim "aris[es] from" the Executive's discretionary decision to commence proceedings. The decision as to the method by which removal proceedings are commenced, which is the genesis of Zaeri's detention, is a discretionary one that § 1252(g) renders non-reviewable by a district court . *See id.* at 487.

Importantly, the Supreme Court held that a prior version of § 1252(g) barred claims similar to those brought here. In *AADC*, aliens alleged that the "INS was selectively enforcing the immigration laws against them in violation of their First and Fifth Amendment rights," and the government admitted "that the alleged First Amendment activity was the basis for selecting the individuals for adverse action." 525 U.S. at 473-74, 488 n.10. Nonetheless, the Supreme Court held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g)." *Id.* at 487.

Detention and removal proceedings go hand-in-hand. Detention is constitutionally authorized "for the brief period necessary for … removal proceedings," *Demore v. Kim*, 538 U.S. 510, 513 (2003), and the INA authorizes the Attorney General "to issue warrants for their arrest and detention *pending removal proceedings*," *Jennings*, 583 U.S. at 303 (emphasis added) (citing 8 U.S.C. § 1226(a)); *see also* 8 U.S.C. § 1357(a). The power to detain is incidental to the power to commence removal proceedings, and, like the commencement of removal proceedings, the decision to place an alien in detention requires an exercise of the Executive's discretion.

Zaeri's claims in this case do arise from the government's commencement of his removal proceedings. And because the decision to detain is inextricably linked with the Executive's discretionary decision to commence removal proceedings, Zaeri's equal-protection claim is barred for the same reason as the petitioners' in *AADC*. That conclusion is not altered by the fact that Zaeri was previously released on an Order of Supervision and later re-detained following revocation of that order. Revocation of an Order of Supervision does not initiate new removal proceedings, but it does constitute a discretionary enforcement action taken in furtherance of the government's authority to execute an existing final order of removal.

Moreover, at the time *AADC* was decided, Congress had not expanded § 1252(g)'s reach of judicial limit to explicitly cover habeas proceedings—a change that makes clear that Congress sought to sweep challenges to detention within the scope of § 1252(g). As

such, detention determinations taken incident to the enforcement of a removal order—including detention following revocation of supervision—fall squarely within the government's "decision or action" to "commence proceedings" for purposes of § 1252(g). 8 U.S.C. § 1252(g).

A wedge between detention and removal proceedings cannot be reconciled with § 1252(g)'s express reference to the habeas statute. *See* 8 U.S.C. § 1252(g) (referencing 28 U.S.C. § 2241). After all, the whole purpose of habeas is to challenge the legality of detention. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (holding that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody"). Nor can a wedge be drawn between detention and the antecedent enforcement decision that results in detention, including the revocation of an Order of Supervision. If the act of detention is not included within the "decision[s] or action[s]" of the Attorney General that are shielded from judicial review by § 1252(g), and then neither could the discretionary enforcement steps that directly lead to detention, and there would have been no need for Congress to list the habeas statute in § 1252(g), and its inclusion serves no purpose. *See Rasmussen v. Gen. Dynamics Corp., Elec. Boat Div.*, 993 F.2d 1014, 1017 (2d Cir. 1993) ("It is well settled that a statute must not be interpreted to render a portion of the statute meaningless or without effect.") (citation omitted). By contrast, reading § 1252(g) to treat detention pending removal and discretionary enforcement actions that result in such detention to be part and parcel of the removal process, including the decision to commence proceedings, gives meaning to the entire statutory provision.

As his habeas petition makes clear, Zaeri is challenging the fact that he is detained on an improper removal ground. ECF No. 3-1, at 15–16. That falls within the heartland of § 1252(g). *See, e.g.*, *Limpin v. United States*, 828 F. App'x 429, 429 (9th Cir. 2020) ("[C]laims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction."); *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("[Section 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and reviewing "ICE's decision to take him into custody and to

detain him during removal proceedings."); *Humphries v. Various Fed. U.S. INS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (similar). Anything less would neuter the very purpose of § 1252(g): It would allow every alien to attack the merits of his removal, through a habeas suit nominally challenging her detention; and in turn, the government would be subject to the sort of burdensome, parallel litigation the INA endeavored to stop. *AADC*, 525 U.S. at 482-86. Instead, what matters is the "substance" of the challenge. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011. And where, as here, a challenge to detention is in substance a collateral attack on the decision to remove, § 1252(g) bars it.

The mere fact that Zaeri is presenting *constitutional* questions related to his detention, including detention following revocation of an Order of Supervision, and the government's enforcement of his removal order does not grant the district court jurisdiction. The Supreme Court made clear in *AADC*—a case in which lawfully admitted residents alleged that they were placed in deportation proceedings because of their political affiliation—that "an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation." 525 U.S. at 488. There, the government even admitted that "the alleged First Amendment activity was the basis for selecting the individuals for adverse action." *Id.* at 488 n.10. Nonetheless, the Supreme Court held that the "challenge to the Attorney General's decision to 'commence proceedings' against them falls squarely within § 1252(g). *Id.* at 487; *see also Cooper Butt ex rel Q.T.R. v. Barr*, 954 F.3d 901, 908-09 (6th Cir. 2020) (holding that the district court did not have jurisdiction to review a claim that the plaintiffs' father "was removed based upon ethnic, religious, and racial bias' in violation of the Equal Protection Clause of the Fifth Amendment."); *Ragbir v. Homan*, 923 F.3d 53, 73 (2d Cir. 2019), *cert. granted, judgment vacated sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020); *Zundel v. Gonzales*, 230 F. App'x 468, 475 (6th Cir. 2007); *Humphries*, 164 F.3d at 945. Similarly here, Zaeri's allegation that the revocation of his Order of Supervision, the resulting detention, and the government's enforcement actions violate the Fifth Amendment does not escape § 1252(g)'s reach, because such claims arise

from discretionary immigration enforcement decisions taken in furtherance of removal. *See, e.g.*, *AADC*, 525 U.S. at 487-92.

As a result, district courts lack jurisdiction to review both statutory and constitutional claims because § 1252(g) bars review of "*any* cause or claim" that arises from the commencement of removal proceedings." *See, e.g.*, *Tazu v. Att'y Gen.*, 975 F.3d 292, 296-98 (3d Cir. 2020) (holding that any constitutional claims must be brought in a petition for review, not a separate district court action); *Elgharib v. Napolitano*, 600 F.3d 597, 602-04 (6th Cir. 2010) (noting that "a natural reading of 'any other provision of law (statutory or nonstatutory)' includes the U.S. Constitution" and finding additional support for the court's interpretation from the remainder of the statute); *Ragbir*, 923 F.3d at 73 (finding habeas jurisdiction appropriate only because the opportunity to present the constitutional claim in a petition for review to the appropriate circuit court of appeal was no longer available); *Zundel*, 230 F. App'x at 475 (explaining that First Amendment challenges related to immigration enforcement action "is properly characterized as a challenge to a discretionary decision to 'commence proceedings' … [and] is insulated from judicial review"); *Humphries*, 164 F.3d at 345 (ruling that § 1252(g) prohibited review of an alien's First Amendment claim based on decision to put him into exclusion proceedings); *Vargas v. U.S. Dep't of Homeland Sec.*, No. 1:17-cv-00356, 2017 WL 962420, at *3 (W.D. La. Mar. 10, 2017) (claim that ICE "violated her First Amendment right to free speech by arresting her and initiating her removal after she made statements to the media … is barred by 8 U.S.C. §1252(g)."); *Kumar v. Holder*, No. 12-cv-5261, 2013 WL 6092707, at *6 (E.D.N.Y. Nov. 18, 2013) (claim of initiation of proceedings in a retaliatory manner "falls squarely within section 1252(g) … [and] [t]he pending immigration proceedings are the appropriate forum for addressing petitioner's retaliation claim in the first instance."). Of note, this Court in *Ragbir* analyzed § 1252(g) and the expansion of the jurisdictional limits the REAL ID Act implemented and found "that by adding the words 'statutory or nonstatutory,' Congress further clarified … it applies even to constitutional claims." *Ragbir*, 923 F.3d at 65.

E. Zaeri's Equal Protection Claim Fails Because DHS's Decision to Detain Him Is Related to Immigration Policy Objectives and Not Motivated by Racial Animus

Plaintiffs cannot bypass the explicit bar on judicial review by framing their claim as a constitutional challenge. Even if this Court were to determine that it has jurisdiction to consider Zaeri's constitutional claim, the government's decision to revoke Zaeri's Order of Supervision and detain him pursuant to an existing final order of removal does not violate the Fifth Amendment.

Zaeri contends that racially discriminatory intent was a motivating factor in the decision to revoke his Order of Supervision and detain him, and argues that strict scrutiny applies based on cases such as *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995), and *Hernandez v. Texas*, 347 U.S. 475, 478–79 (1954). Those cases articulate the general rule that governmental classifications based on race or national origin are ordinarily subject to strict scrutiny in domestic equal-protection contexts. They do not govern here.

The appropriate standard for reviewing constitutional challenges in this context is set forth by the Supreme Court in *Trump v. Hawaii*, 585 U.S. 667, 703–05 (2018). There, in determining that a deferential standard applies, the Supreme Court explained that "the upshot of [its] cases in this context is clear: 'Any rule of constitutional law that would inhibit the flexibility' of the political branches 'to respond to changing world conditions should be adopted only with the greatest caution,'" and that judicial inquiry into immigration enforcement decisions is "highly constrained." *Id.* at 704.

Here, the revocation of Zaeri's Order of Supervision and his resulting detention are discretionary immigration-enforcement actions taken in furtherance of executing a final order of removal. The Supreme Court has "long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). Because such decisions implicate "relations with foreign powers" and involve "classifications … defined in the light of changing political and economic circumstances," they are "frequently of a character more appropriate to either the Legislature or the

Executive." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976); *see also Galvan v. Press*, 347 U.S. 522, 531 (1954) ("Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government.").

Accordingly, even where a petitioner invokes cases applying strict scrutiny in non-immigration contexts, courts apply a highly deferential standard when the challenged action concerns immigration enforcement, detention, or removal. *See Hawaii*, 585 U.S. at 704–05; *Kleindienst v. Mandel*, 408 U.S. 753, 769–70 (1972).

Under that deferential framework, Zaeri's equal-protection claim fails. Zaeri does not dispute that he is subject to a final order of removal or that DHS has statutory authority to detain him in furtherance of executing that order. Nor does he plausibly allege facts showing that the revocation of his Order of Supervision or his detention involved a race-based classification of the type addressed in *Adarand* or *Hernandez*, as opposed to a discretionary enforcement decision inherent in immigration custody determinations.

Zaeri's reliance on generalized statements, historical background, or the sequence of enforcement actions does not establish discriminatory intent. The mere fact that immigration enforcement decisions may disproportionately affect individuals of certain nationalities does not, without more, demonstrate unconstitutional racial animus. National origin is an inherent feature of immigration enforcement and does not itself trigger strict scrutiny.

Finally, Zaeri's conjecture that the revocation of his supervision and detention were driven by impermissible motives is insufficient as a matter of law. It is "expected—perhaps even critical to the functioning of the government—for executive officials to conform their decisions to the administration's policies," and such conformity does not itself establish unconstitutional discrimination. Absent evidence linking racial animus to the specific enforcement action taken against Zaeri, his equal-protection claim fails.

Accordingly, regardless of whether the Court were to consider the claim under the deferential standard recognized in *Trump v. Hawaii* or the general strict-scrutiny principles

articulated in *Adarand* and *Hernandez*, Zaeri cannot establish a violation of the Fifth Amendment.

F. Petitioner Fails to Establish an APA Violation Based on Alleged Lack of Authority or Required Findings in the Revocation of His Order of Supervision

Petitioner's argument that his Notice of Revocation of Release is invalid because the Executive Associate Commissioner did not sign it lacks merit because authority to execute notices of revocation has been delegated to immigration officers such as Nikita Baker, the Acting Baltimore Field Office Director who signed Petitioner's Notice of Revocation of Release.

On March 1, 2003, the Secretary of the Department of Homeland Security issued a Delegation of Authority. The undersigned counsel, however, did not receive authorization—from the local DHS office in Las Vegas—to file the non-public, official document containing details regarding the delegation of authority to revoke an Order of Supervision. Even so, this delegation authority is publicly discussed by certain court decisions such as in *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. 2025) and *Douglas v. Baker*, No. 25-CV-2243-ABA, 2025 WL 2687354, at *5 (D. Md. Sept. 19, 2025).

In *Cruz Medina*, the United States District Court of Maryland analyzed a petitioner's argument that ICE violated certain regulations that govern revocation of immigration orders of supervision. *Cruz*, 794 F. Supp. 3d at 381. There, as in here, the petitioner argued that the person who signed the Notice of Revocation of Release did not have authority to issue the revocation notice, which rendered the revocation invalid. *Id.* The *Cruz Medina* court, however, found that the petitioner had not identified authority that would suggest that the District Director prohibited from delegating *signatory* authority, or authority that would suggest that a District Director must include in a revocation order the findings set forth in § 241.4(l)(2).

And subsequently in *Douglas*, the same court found that the record adequately establishes that signatory authority was delegated to the officer who signed the order revoking the petitioner's release. *Douglas*, 2025 WL 2687354, at *5. The court there stated:

> In this case, however, the Court concludes that Mr. Douglas has not shown that the alleged violations of § 241.4(l) or § 241.13, if they did constitute violations of those regulations, not only rise to the level of a due process violation but would independently entitle Mr. Douglas to a grant of habeas relief in the form of release from detention. The Court understands the government to have revoked Mr. Douglas's supervised release because it determined that "[i]t is appropriate to enforce a removal order" within the meaning of 8 C.F.R. § 241.4(l)(2)(iii). And with respect to the authority of the officer who signed the notice revoking Mr. Douglas's release, as this Court explained in *Cruz Medina*, t***he record adequately establishes that signatory authority was delegated to the officer who signed the order revoking Mr. Douglas's release.***

Id.

Consequently, although undersigned counsel is not able to provide the same documents that were filed in the *Cruz Medina* and *Douglas* court, Federal Respondents submit that there is significant circumstantial evidence to support a finding that ICE did not violate any laws or regulations or delegations of authority in issuing a Notice of Revocation of Release that was not expressly signed by the "ICE Executive Associate Director," as Petitioner would have the Court believe (*see* ECF No. 3-1, at 17 ("The revocation was also not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances, as cited and discussed in the Statutory Framework section above." "Petitioner's order of supervision was not revoked by the ICE Executive Associate Director. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director")

Further, to the extent Petitioner alleges that Federal Respondents did not make findings that revocation was in the public interest (*see* ECF No. 3-1, at 17), the *Cruz Medina* decision is instructive. "Although Petitioner is correct that the Executive Associate Commissioner or a District Director must personally decide whether and when to revoke release, Petitioner has not identified authority that would suggest that a District Director is prohibited from delegating *signatory* authority, or authority that would suggest that a District Director must include in a revocation order the findings set forth in § 241.4(l)(2)." *Cruz* Medina, 794 F. Supp. 3d at 382.

IV. Conclusion

For the foregoing reasons, the Petition should be denied or dismissed.

Respectfully submitted this 22nd day of December 2025.

Respectfully submitted,

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