UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LEOBARDO OVIEDO OLGUIN,

Petitioner,

v. Case No. 25-CV-1822

DALE J. SCHMIDT, Sheriff, Dodge County Detention Facility; SAM OLSON, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement; KRISTI NOEM, Secretary, Department of Homeland Security; TODD LYONS, Acting Director, Immigration and Customs Enforcement; and PAMELA BONDI, Attorney General, U.S. Department of Justice,

Respondents.

RESPONDENTS' ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

In accordance with 28 U.S.C. § 2243 and the Court's Rule 4 Screening Order (Dkt. 3), Respondents Samuel Olson, Kristi Noem, Todd Lyons, and Pamela Bondi[1] hereby answer the Petition for Writ of Habeas Corpus (Dkt. 1) ("Petition") and oppose the Motion for Temporary Restraining Order (Dkt. 2) ("TRO Motion") filed by Petitioner Leobardo Oviedo Olguin.

[1] The Office of the United States Attorney for the Eastern District of Wisconsin does not represent Petitioner's jail custodians, including Respondent Dale J. Schmidt, who are employees of the State of Wisconsin. However, counsel for the jail custodians have authorized the undersigned to state that they join in this answer and do not intend to submit a separate response.

I. INTRODUCTION

Petitioner is a Mexican citizen who has never been legally admitted into the United States and has no claim to citizenship or lawful status. Immigration officers already removed Petitioner from the United States once, back in 2019, when he was returned to Mexico after being arrested for methamphetamine possession. After Petitioner illegally re-entered the country and subsequently committed other crimes, immigration officers reinstated his removal order per 8 U.S.C. § 1231(a)(5).

When Petitioner expressed a fear of being returned to Mexico, the Department of Homeland Security ("DHS") opened "withholding only" proceedings to determine whether Petitioner was entitled to withholding of removal to Mexico under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85 ("CAT"). On April 28, 2025, an immigration judge granted Petitioner withholding of removal to Mexico. (Order, Dkt. 1-1.) Thus, Petitioner has been ordered removed from the United States due to his lack of immigration status and illegal re-entry, but immigration officers may not send Petitioner back to his home country of Mexico.

In such circumstances, Congress has authorized DHS to remove inadmissible aliens to alternate countries, in a process known as a "third country" removal. 8 U.S.C. § 1231(b)(1)(C)(iv) and (b)(2)(E)(vii). The day after the immigration judge's withholding order, on April 29, 2025, DHS sent requests to the foreign embassies of Guatemala, Honduras, and El Salvador, asking if they would accept Petitioner.

While those requests have not yet been granted, DHS continues to detain Petitioner—as authorized by Congress in 8 U.S.C. § 1231(a)(6)—due to his criminal history and mental incompetency (as found by the immigration judge).

Habeas relief is unwarranted at this point because Petitioner has failed to exhaust his administrative remedies under 8 C.F.R. § 241.13. (*See* Part V.A below.) That regulation provides a procedure—which was specifically designed to comply with the Supreme Court's holding in *Zadvydas v. Davis*, 533 U.S. 678 (2001)—by which detained aliens may request supervisory release while the government arranges for their removal from the country. 8 C.F.R. § 241.13(d)–(j). Rather than pursue that administrative path, Petitioner asks the Court to order his unconditional "immediate release" under habeas. (Petition ¶13.) His bypass places the Court in the untenable position of assessing (based on scant information) whether to release a psychologically compromised alien with an extensive criminal history into a country where he has no claim to lawful residence. *But see Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004) (highlighting "the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts") (quoting *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992)).

The Court should direct Petitioner to exhaust his administrative remedies before taking up his habeas petition. *See Cuesta v. ICE*, No. 21-CV-695, 2022 WL 1488177, at *5 (E.D. Wis. May 11, 2022) (denying petition because the petitioner had "not shown that he has sought relief from immigration officials or otherwise exhausted all available administrative remedies before seeking habeas relief").

Respondents will treat the Petition as a written request for Petitioner's release under 8 C.F.R. § 241.13(d), and DHS will adjudicate it according to the standard protocols set forth in the regulation. If Petitioner remains dissatisfied, he may seek judicial review after the creation of a complete administrative record. *See Meighan v. Chertoff*, No. H-08-1222, 2008 WL 1995374, at *3 (S.D. Tex. May 6, 2008).

As for Petitioner's request for an order enjoining DHS's standard policies regarding third-country removals, the Court should decline to address such issues based on principles of comity and judicial economy, given the pending class action litigation in *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025). (*See* Part V.B.1 below.) While the Supreme Court has stayed the class-wide preliminary injunction issued by the district court in that case, *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025), Petitioner remains a member of the certified class "whose equitable claims are presently being litigated in that forum," and it would be "inappropriate for the Court to inject itself into that ongoing litigation." *Qasemi v. Kurzdorfer*, No. 25-CV-668-FPG, 2025 WL 2938607, at *6 (W.D.N.Y. Oct. 16, 2025).

Moreover, Congress has stripped federal district courts of subject matter jurisdiction over CAT-based claims such as Petitioner's multiple times over. *See* 8 U.S.C. § 1252(a)(4), (b)(9), (g). (*See* Part V.B.2 below.) And, regardless, Petitioner's claim to injunctive relief fails on its legal merits. (*See* Part V.B.3 below.)

For these reasons, as more fully explained below, the Court should deny both the TRO Motion and the Petition, and Respondents respectfully request that the Court dismiss this case without prejudice.

II. STATUTORY AND REGULATORY BACKGROUND

A. Reinstatement of Removal Orders

If an alien illegally reenters the United States after having been removed, his previous removal order is automatically reinstated, and immigration officers may remove him from the country "under the prior order at any time after the reentry." 8 U.S.C. § 1231(a)(5). The Immigration and Nationality Act ("INA") delineates a series of potential countries to which an alien might be removed, such as a country designated by the alien, the alien's country of citizenship, the alien's previous country of residence, the alien's county of birth, or the country from which the alien departed for the United States. 8 U.S.C. § 1231(b). If none of the countries listed in the statute is a viable option, Congress has provided a failsafe, authorizing immigration officers to remove an alien to any country willing to accept him. 8 U.S.C. § 1231(b)(1)(C)(iv) and (b)(2)(E)(vii).

B. Withholding of Removal

Congress, in compliance with the United States' treaty obligations under CAT, has provided aliens with the ability to challenge removal to a particular country if the alien fears that he will be persecuted or tortured in that country. Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681-822 ("FARRA") § 2242(b); *see also* 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.31, 241.8(e), and 1208.31.[2]

[2] Technically, there are two separate paths to withholding relief: one statutory, based on a "clear probability" of persecution, and one under CAT, if the alien shows "it is more likely than not that he ... would be tortured if removed to the proposed country of removal." *Rivas-Jarquin v. Bondi*, 149 F.4th 944, 949–51 (7th Cir. 2025).

Importantly, even if an alien is granted withholding, DHS may still execute a removal order and remove the alien from the United States: withholding restricts the government's ability to remove an alien to a particular country, but it does not preclude removal *en toto*. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) ("If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States. The removal order is not vacated or otherwise set aside. It remains in full force, and DHS retains the authority to remove the alien to any other country authorized by the statute.") (emphases in original); *see also Nasrallah v. Barr*, 590 U.S. 573, 582 (2020) ("An order granting CAT relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country. But the noncitizen still 'may be removed at any time to another country where he or she is not likely to be tortured.'") (quoting 8 C.F.R. § 1208.17(b)(2), 1208.16(f)).

C. Third-Country Removals

Third-country removals are often the only viable option for removing aliens who have entered the country illegally but cannot be returned to their country of origin. Although Congress expressly provided for third-country removals when it passed the INA, it did not delineate any specific administrative processes for such removals, leaving the matter to the Executive Branch. *See* 8 U.S.C. § 1231(b) note (directing Executive Branch agencies to "prescribe regulations to implement the obligations of the United States under [CAT]").

On March 30, 2025, DHS issued guidance clarifying its "policy regarding the removal of aliens with final orders of removal ... to countries other than those designed for removal in those removal orders." Kristi Noem, U.S. Department of Homeland Security, *Guidance Regarding Third Country Removals* (March 30, 2025). This guidance letter distinguishes between (i) removals to countries that have provided credible assurances that any aliens removed there will not be tortured, and (ii) removals to countries that have not done so. *Id.* For the former, the alien "may be removed without the need for further procedures." *Id.* For the latter, DHS must first provide the alien with written notice of the planned removal and an opportunity to "affirmatively express a fear of persecution or torture" in that country. *Id.* If the alien expresses such a fear, an immigration officer will conduct a prompt screening to determine whether he "would more likely than not be" tortured in the country of proposed removal. *Id.* Where the foreign national fails to satisfy this standard, he "will be removed," but if he does satisfy it, he will be placed into additional administrative procedures or immigration officer "may choose to designate another country for removal," and start the process afresh. *Id.*

D. Continued-Detention Review Proceedings

Under the INA, Congress has directed immigration officers to execute final orders of removal within a 90-day removal period. 8 U.S.C. § 1231(a)(1). Detention during this 90-day removal period is mandatory. 8 U.S.C. § 1231(a)(2)(A); *see also Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of that process.").

Where the government cannot effectuate a removal within the 90-day removal period and the alien is inadmissible (including for, among other reasons, having illegally entered the country in violation of 8 U.S.C. § 1182(a)(6)) or is determined "to be a risk to the community or unlikely to comply with the order of removal," Congress has authorized DHS to detain the alien beyond the initial removal period. 8 U.S.C. § 1231(a)(6); *see also* 8 C.F.R. § 214.4(a)(1). This applies to aliens who have been granted withholding of removal. 8 C.F.R. § 214.4(b)(3).

To comply with the Supreme Court's decision in *Zadvydas*, which interpreted 8 U.S.C. § 1231(a)(6) to contain "an implicit 'reasonable time' limitation," 533 U.S. at 682, DHS has adopted a regulation that permits an alien who is subject to a final order of removal but who also has been granted withholding of removal—such as Petitioner—the ability to request that the Headquarters Post-order Detention Unit ("HQPDU") review his continued detention. 8 C.F.R. § 241.13(d) (directing aliens to "submit a written request for release to the HQPDU" at "any time after the removal order becomes final" if the alien asserts "that his or her removal is not significantly likely in the reasonably foreseeable future"); *see also* IMMIGRATION AND NATURALIZATION SERVICE AND EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Continued Detention of Aliens Subject to Final Orders of Removal*, 66 Fed. Reg. 56967-01 (Nov. 14, 2001).[3]

[3] *See also Wynter v. Tryon*, No. 13-CV-1027, 2014 WL 1572356, at *5 (W.D.N.Y. Apr. 18, 2014) ("To comply with the Supreme Court's ruling in *Zadvydas*, the Attorney General has promulgated regulations providing for review of the custody status of aliens who have been detained for more than six months after the issuance of a final order of removal.").

When it receives a request, HQPDU prepares an initial response and then gathers additional information relevant to the matter. 8 C.F.R. § 241.13(e). Then, after compiling the administrative record, HQPDU considers all facets of the case to assess the prospects for the alien's removal and issues a decision. 8 C.F.R. § 241.13(f)–(g). If HQPDU determines that there exists no significant likelihood that the alien will be removed in the reasonably foreseeable future, then it must consider whether any special circumstances justify continued detention under 8 C.F.R. § 214.14[4] and, if not, arrange for the alien's release under an appropriate order of supervision. 8 C.F.R. § 241.13(g)–(h). Such an order is designed to "to protect the public safety and to promote the ability of the Service to effect the alien's removal as ordered, or removal to a third country, should circumstances change in the future." 8 C.F.R. § 241.13(h)(1). The conditions of release may include requiring a bond, attendance in a rehabilitative program, or submission to a medical or psychiatric examination. 8 C.F.R. §§ 241.5(b), 241.13(h)(1); *cf. Zadvydas*, 533 U.S. at 695 (acknowledging the legitimacy of supervisory conditions over an alien's release from detention).

If HQPDU decides not to release an alien, the alien may submit a new request for review of his detention after six months, at which point HQPDU conducts the process over and issues a new *de novo* decision. 8 C.F.R. § 241.13(j).

[4] Such "special circumstances" that might justify continued detention cover aliens who (among other things) pose national security or terrorism risks, who are determined to be "specially dangerous" based on their history of violent crimes or mental condition, or whose release might lead to serious adverse foreign policy consequences. 8 C.F.R. § 241.14(c)–(f).

III. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner originally entered this country illegally, at an unknown date, time, and location, without being inspected, admitted, or paroled by a United States immigration officer. (Petition ¶27; *see also* Declaration of Deportation Officer Robert Podgorni, filed herewith ("Podgorni Decl.") ¶¶6–7.) In August 2019, Petitioner was arrested and prosecuted for methamphetamine possession, a charge to which he eventually pleaded no contest. *State v. Oviedo-Olguin*, No. 2019CF001177 (Brown Cty. Cir. Ct. filed Aug. 7, 2019). Given Petitioner's lack of legal status, an immigration judge ordered him removed on August 21, 2019, and immigration officers removed him to Mexico on September 6, 2019. (Podgorni Decl. ¶8.)

At some point thereafter, Petitioner once again re-entered the United States without being inspected, admitted, or paroled. (Petition ¶28; Podgorni Decl. ¶¶6–7.) In 2023, Petitioner ran into trouble with the law again, this time for misappropriating another person's identity to obtain money and resisting arrest, charges to which he eventually pleaded no contest. *See State v. Oviedo-Olguin*, 2023CF000187 (Door Cty. Cir. Ct. filed Oct. 19, 2023); *State v. Oviedo-Olguin*, 2023CF001928 (Brown Cty. Cir. Ct. Nov. 1, 2023).[5] On May 23, 2024, immigration

[5] Petitioner also has been charged with a series of hit-and-run and reckless-driving type offenses. *See Dodge Cty. v. Oviedo-Olguin*, 2022TR004141 (Dodge Cty. Cir. Ct. filed Sept. 27, 2022); *State v. Oviedo-Olguin*, 2023CT000767 (Outagamie Cty. Cir. Ct. filed Oct. 11, 2023); *Outagamie Cty. v. Oviedo-Olguin*, 2023TR003768 (Outagamie Cty. Cir. Ct. filed May 1, 2023). He also has been cited numerous times for driving vehicles without a proper license. *See State v. Oviedo-Olguin*, No. 2022TR007031 (Brown Cty. Cir. Ct. filed Aug. 29, 2022); *Dodge Cty. v. Oviedo-Olguin*, No. 2022TR004047 (Dodge Cty. Cir. Ct. filed Sept. 19, 2022); *Outagamie Cty. v. Oviedo-Olguin*, No. 2023TR003769 (Outagamie Cty. Cir. Ct. filed May 1, 2023).

officers served Petitioner with a Form I-871 Decision to Reinstate Prior Order, which immediately reinstated Petitioner's previous order of removal pursuant to 8 U.S.C. § 1231(a)(5). (Podgorni Decl. ¶10.)

Following the reinstatement of Petitioner's removal order, Petitioner expressed a fear of being returned to Mexico, which automatically triggered screening procedures for potential withholding of removal under 8 U.S.C. § 1231(b)(3) and CAT. (Petition ¶¶30–34; Podgorni Decl. ¶11.) While the immigration court conducted withholding-only proceedings, on August 19, 2024, United States Immigration and Customs Enforcement's ("ICE") Chicago Field Office issued a decision to continue Petitioner's detention under the authority of 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4(c)(1). (Podgorni Decl. ¶13 & Ex. A.) On November 14, 2024, in accordance with 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4(i), a panel of immigration officers interviewed Petitioner to consider his continued detention, during which Petitioner was afforded the opportunity to submit any information that he believed might serve as a basis for his release from custody. (Podgorni Decl. ¶14.) On February 19, 2025, HQPDU issued a decision to continue Petitioner's detention pursuant to the authority of 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4(i)(6). (Podgorni Decl. ¶15 & Ex. B.)

Ultimately, an immigration judge granted Petitioner's request for withholding of removal on April 28, 2025. (Order, Dkt. 1-1; *see also* Podgorni Decl. ¶16.) The next day, immigration officers submitted requests to the foreign embassies of Guatemala, Honduras, and El Salvador to determine whether those

sovereign nations might accept Petitioner. (Podgorni Decl. ¶17.) While none of these countries has yet granted the federal government's request, immigration officers continue to pursue other options for Petitioner's removal from the country in accordance with the immigration judge's withholding order, federal immigration law, and CAT. (Podgorni Decl. ¶¶17 & 19.)

IV. STANDARD OF REVIEW

A petition for a writ of habeas corpus challenges the legality or constitutionality of the government's restraint or imprisonment of the petitioner. 28 U.S.C. § 2241. Petitioner bears the burden to show his detention is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941). A hearing is not required where, as here, the petition and response present only legal issues. 28 U.S.C. § 2243.

Injunctive relief under Rule 65 is "an exercise of very far-reaching power, never to be indulged in except in a case clearly demanding it." *Cassell v. Snyders*, 990 F.3d 539, 544 (7th Cir. 2021). Because "[p]reliminary relief is 'an extraordinary and drastic remedy,'" a court should not grant it "unless the movant, by a clear showing, carries the burden of persuasion." *Johnson v. Leberak*, No. 24-CV-149, 2025 WL 1454463, at *1 (E.D. Wis. May 21, 2025) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). The movant must establish that "(1) his underlying case has some likelihood of success on the merits, (2) no adequate remedy at law exists, and (3) he will suffer irreparable harm without the injunction." *Id.* (citing *Wood v. Buss*, 496 F.3d 620, 622 (7th Cir. 2007)).

V. ARGUMENT

The Court should deny habeas relief because Petitioner has failed to exhaust the administrative remedies available to him under 8 C.F.R. § 241.13. Moreover, with respect to Petitioner's request for injunctive relief, the Court should reject the invitation to inject itself into class-action litigation pending in Massachusetts, of which Petitioner is a certified class member, especially given that it lacks subject matter jurisdiction and given that Petitioner's claim fails on the legal merits.

A. Petitioner's *Zadvydas* Claim and His Failure to Exhaust Administrative Remedies

The Supreme Court in *Zadvydas* held that 8 U.S.C. § 1231(a)(6)—which authorizes the detention of aliens pending removal—does not permit permanent detention. *Zadvydas*, 533 U.S. at 699 (holding detention no longer authorized "once removal is no longer reasonably foreseeable"). At the same time, the Justices recognized that determining whether to detain removable aliens remains an area of "primary Executive Branch responsibility" and declined to adopt a hard-and-fast rule for how long detention may last. *Id.* at 701.[6] Aliens seeking release must present "good reason to believe that there is no significant likelihood of removal in

[6] Rather than announce a fixed rule, the Supreme Court stated that detentions of less than six months would be presumed to be reasonable. *Zadvydas*, 533 U.S. at 701. The Court took care to explain that the presumption "does not mean that every alien not removed must be released after six months," but that aliens "may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Ibid.* It also emphasized that its decision did not address "special circumstances where special arguments might be made for forms of preventative detention and for heightened deference to the judgments of the political branches with respect to matters of national security." *Id.* at 696.

the reasonably foreseeable future," at which point the government may "respond with evidence sufficient to rebut that showing." *Id.*

Here, Petitioner claims his continued detention violates *Zadvydas* because more than six months have passed since the immigration judge granted him withholding of removal to Mexico, but DHS has not yet removed him to a third country. (Petition ¶¶10–11.) Yet at no point does Petitioner allege that he ever submitted a request for his release under 8 C.F.R. § 241.13, the regulation specifically designed to address this exact scenario.

Even when not mandated by statute, federal courts generally require parties to exhaust their administrative remedies before seeking relief in court, as a matter of "sound judicial discretion." *Gonzalez v. O'Connell*, 355 F.3d 1010, 1016 (7th Cir. 2004) (citing *McCarthy v. Madigan*, 503 U.S. 140 (1992)). Requiring exhaustion of administrative remedies is especially warranted where the Executive Branch "has particular expertise in interpreting the INA." *Gonzalez*, 355 F.3d at 1017 (citing *McCarthy*, 503 U.S. at 145). It also serves judicial efficiency, as the administrative process provides the Executive Branch with the opportunity to resolve a dispute "without the need for involvement by the federal courts." *Gonzalez*, 355 F.3d at 1018 (quoting *Duvall v. Elwood*, 336 F.3d 228, 232 (3d Cir. 2003)). Moreover, even if the administrative process is unable to resolve the parties' dispute, the judiciary "will benefit not only from a more complete record, but also from the agency's expertise on questions presented." *Gonzalez*, 355 F.3d at 1018 (citing *McCarthy*, 503 U.S. at 145); *see also Parisi v. Davidson*, 405 U.S. 34, 37–38 (1972) ("The basic purpose of

the exhaustion doctrine is to allow an administrative agency to perform functions within its special competence—to make a factual record, to apply its expertise, and to correct its own errors so as to moot judicial controversies.").

Petitioner has chosen to file a habeas petition asking the "Court to order his immediate release from detention" with no conditions (Petition ¶ 13), rather than follow the procedures laid out in 8 C.F.R. § 241.13, which were specifically designed to address such concerns. *See Parker v. Sessions*, No. H-18-2261, 2018 WL 11491450, at *2 (S.D. Tex. July 16, 2018) (denying habeas petition for failure to exhaust "available administrative remedies that were implemented after the Supreme Court's decision in *Zadvydas* to provide administrative review procedures"). While Petitioner is correct that he has been detained for more than six months since the immigration judge granted him withholding of removal (Petition ¶6), nowhere does Petitioner allege that he sought relief under 8 C.F.R. § 241.13.[7]

Federal courts around the country have refused to allow aliens to bypass the procedures set forth in 8 C.F.R. § 241.13 in favor of requesting unconditional, unsupervised release through habeas proceedings. *See, e.g., Hung Van Le v.*

[7] While Petitioner's counsel did email an immigration officer on May 5, 2025, to inquire about Petitioner's "release timeline" (Petition ¶40), that email failed to assert a "basis for the alien's belief that there is no significant likelihood that the alien will be removed in the reasonably foreseeable future," as required by 8 C.F.R. § 241.13(d)(1). (May 5, 2025 Email, Dkt. 1-4.) *See Podoprigora v. Chadbourne*, No. Civ.A. 03-420 T, 2004 WL 725057, at *5 (D.R.I. Mar. 2, 2004) (holding that "letters sent to various INS officials" did not constitute a written request for release within the meaning of 8 C.F.R. 241.13(d)). Moreover, this email from counsel does not comply with Petitioner's obligation to supply "information sufficient to establish his ... compliance with the obligation to effect his ... removal and to cooperate in the process of obtaining necessary travel documents." 8 C.F.R. § 241.13(d)(2). Rather, counsel's email indicated that Petitioner was "opposed to his removal to ***any*** third country." (May 5, 2025 Email, Dkt. 1-4 (emphasis added).)

Sessions, No. H-18-1984, 2018 WL 3361515, at *1 (S.D. Tex. July 10, 2018) (requiring habeas petitioner to exhaust administrative remedies under 8 C.F.R. § 241.13); *Quintana Casillas v. Sessions*, No. Civ. 17-01039-DME-CBS, 2017 WL 3088346, at *10 (D. Colo. July 20, 2017) (holding it would be impermissible to allow a petitioner "to bypass the special, centralized review procedures that the immigration agency promulgated in response to *Zadvydas*"); *Kalu v. DHS*, No. 1:10-cv-244, 2010 WL 4366402, at *2 (M.D. Pa. Oct. 28, 2010) (habeas petition "premature" until HQPDU conducted a review pursuant to 8 C.F.R. § 241.13).

Requiring administrative exhaustion in this context makes sense because, unlike an ordinary habeas petitioner, an inadmissible alien subject to a final order of removal (such as Petitioner) cannot simply be released unconditionally back into the United States. Congress has mandated that, if such individuals are to be released from detention, their release "shall be subject to the terms of supervision" promulgated by federal immigration agencies. 8 U.S.C. § 1231(a)(6). Any inadmissible alien released pending removal must abide by specific conditions, such as making periodic appearances before an immigration officer, submitting to any necessary medical and psychiatric examinations, providing requested information to immigration officers, and obeying reasonable restrictions on their conduct. 8 U.S.C. § 1231(a)(3); *see also* 8 C.F.R. § 241.4(j) (directing immigration officers to "impose such conditions or special conditions on release as the Service considers appropriate in an individual case or cases"); 8 C.F.R. 241.5 (listing conditions imposed under an order of supervision). Moreover, federal immigration agencies have a strong

"interest in maintaining uniform, consistent detention polices under §§ 241.13 and 241.14." *Quintana Casillas*, 2017 WL 3088346, at *10.

Here, Petitioner's request for an unconditional "immediate release" (Petition ¶13) is particularly problematic given his criminal history and mental condition. He himself alleges that he suffers from "severe mental illness." (Petition ¶33.) *Cf. Zadvydas*, 533 U.S. at 690 (recognizing that Supreme Court precedent has permitted indefinite civil detentions supported by "a special justification, such as harm-threatening mental illness"). An affidavit from Petitioner's medical doctor indicates that Petitioner exhibits [redacted] (Affidavit of Nora E. Rowley, Dkt 1-2, ¶31.) Given Petitioner's apparent mental disorders, the HQPDU should be afforded the opportunity to evaluate whether any special circumstances justify Petitioner's continued detention or whether any special conditions of release are warranted to protect the public or Petitioner. 8 C.F.R. 241.13(g)(1) (authorizing HQPDU to "require that the alien submit to a medical or psychiatric examination prior to establishing appropriate conditions for release or determining whether to refer the alien for further proceedings under § 214.14 because of special circumstances justifying conditioned detention"); *see also* 8 C.F.R. § 214.14(f)(1)(ii) (authorizing continued detention of aliens who, "[d]ue to a mental condition or personality disorder and behavior associated with that condition or disorder, ... [are] likely to engage in acts of violence in the future").

At the very least, requiring Petitioner to follow the procedures set forth in 8 C.F.R. § 241.13 will generate a fulsome administrative record for the Court's review. *See Quintana Casillas*, 2017 WL 3088346, at *10 ("[T]he court concludes that as a prudential matter, the court should decline to rule on the petition as premature. The record is insufficiently developed, and the administrative review process in § 241.13 contemplates the preparation of a record.") (internal punctuation omitted); *Royer v. Holder*, No. 3:12-CV-1319-J-12MCR, 2012 WL 6553114, at *3 (M.D. Fla. Dec. 14, 2012) ("Once Petitioner has received his final decision from Headquarters, he may file a habeas petition. At that point, the record will have been fully developed, which will benefit any analysis of Petitioner's claim for release."); *Meighan*, 2008 WL 1995375, at *3 ("Requiring administrative review first will benefit any analysis of the petitioner's claim by virtue of having a record that includes input from the State Department as well as a record of the petitioner's cooperation in obtaining a travel document to secure his removal.").

Respondents will treat Petitioner's habeas petition as a written request for release under 8 C.F.R. § 241.13(d) and forward it to HQPDU for review under the standard procedures of the regulation. The Court should—as other federal district courts have done—dismiss the Petition without prejudice to Petitioner's ability to seek judicial review after the HQPDU issues its administrative decision. *See Royer*, 2012 WL 6553114, at *3 ("Petitioner may file a new habeas case once he has exhausted his administrative remedies and Headquarters has made its custody determination."); *Campbell v. Holder*, No. CV-10-2384, 2010 WL 5014309, at *2

(M.D. Pa. Dec. 3, 2010) (ordering the government "to treat the instant petition as a request for release under 8 C.F.R. § 241.13"); *Singh v. Gonzales*, No. H-05-4361, 2006 WL 6584615, at *2 (S.D. Tex. Feb. 17, 2006) (dismissing petition without prejudice after directing agency to treat it as a 8 C.F.R. § 241.13(d) request).[8]

B. Petitioner's Request for Injunctive Relief

Petitioner also asks the Court "to enjoin the Government from removing him to a third country" without special notice and hearing procedures not called for by the INA and its implementing regulations. (Petition ¶14; *see also id.* ¶77.) Specifically, Petitioner asserts that DHS's third-country removal policies do not provide "any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country." (Petition ¶¶66–67.) This claim fails for at least three separate, independent reasons.

1. The Court Should Decline to Hear Petitioner's Claims based on Comity Principles.

As Petitioner recognizes, his claim for injunctive relief has already been brought to the federal courts through a class-action lawsuit pending in Massachusetts, *D.V.D. v. DHS*, No. 25-10676-BEM. (Petition ¶68.) On April 18, 2025, that court certified the following class:

[8] *See also Hechemi v. Gonzales*, No. H-05-3242, 2005 WL 6472778, at *2 (S.D. Tex. Dec. 2, 2005) ("Respondents are instructed to treat the petition filed in this case as a request for release under 8 C.F.R. § 241.13 and 214.4."); *Podoprigora v. Chadbourne*, No. Civ.A. 03-420 T, 2004 WL 725057, at *5 (D.R.I. Mar. 2, 2004) (holding that the petition could "bring another petition for a writ of habeas corpus, *after* he has attempted to be released pursuant to 8 C.F.R. § 241.13") (emphasis in original); *Saykin v. Holder*, No. 10-10731-RGS, 2010 WL 1839413, at *2 (D. Mass. May 5, 2010) (directing the petitioner to discuss the resolution of administrative proceedings under 8 C.F.R. § 241.13 in any future habeas petition filed).

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5),[9] 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.

D.V.D., 778 F. Supp. 3d at 378, 394 (D. Mass. 2025).

Petitioner is a represented member of that class, as his Petition explains that he has a final order of removal issued under 8 U.S.C. § 1231(a)(5) (Petition ¶¶3 & 34) and he fears immigration officers will deport him to a country not designated in his removal order. (Petition ¶¶10, 38.)

The district court in *D.V.D.* granted the certified class's motion for a temporary injunction and imposed certain procedural conditions that the government would need to follow before it could execute an alien's removal to a third country. *Id.* at 392. The Supreme Court stayed that injunction, through an order unaccompanied by an opinion explaining its reasoning, *DHS v. D.V.D.*, 145 S. Ct. 2153 (Mem.) (2025), but the district court litigation continues and the class of which Petitioner is a member remains certified. *See, e.g.*, Order, Dkt. 221, *D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass. Oct. 28, 2025) (denying stay motion).

Given that Petitioner's claims for injunctive relief are already being litigated in Massachusetts—at a much further stage in the proceedings—it would be inappropriate for this Court to interfere with that on-going litigation. *See Smith v.*

[9] Codified at 8 U.S.C. § 1231(a)(5)

Bayer Corp., 564 U.S. 299, 317 (2011) ("Finally, we would expect federal courts to apply principles of comity to each other's class certification decisions when addressing a common dispute."); *Smentek v. Dart*, 683 F.3d 373, 376 (7th Cir. 2012) (explaining that comity principles operate "to caution judges against stepping on each other's toes when parallel suits are pending in different courts"). Several other federal district courts presented with nearly identical claims to those raised by Petitioner here have taken this approach. *See Qasemi v. Kurzdorfer*, No. 25-CV-668-FPG, 2025 WL 2938607, at *6 (W.D.N.Y. Oct. 16, 2025) ("Although Petitioner is no longer subject to preliminary injunctive relief in the *D.V.D.* case, he remains a class member whose equitable claims are presently being litigated in that forum. It would be inappropriate for the Court to inject itself into that ongoing litigation."); *see also Sanchez v. Bondi*, No. 25-cv-02287, 2025 WL 2550646, at *2 (D. Colo. Aug. 20, 2025) (collecting cases); *I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1519449, at *2 (D. Md. May 27, 2025) (explaining that "[b]asic principles of comity and judicial economy" counsel against "assert[ing] jurisdiction over virtually identical claims between essentially the same parties" as the *D.V.D.* litigation).

2. The Court Lacks Subject Matter Jurisdiction over Petitioner's Request for Injunctive Relief.

Declining to take up Petitioner's claim for injunctive relief is further reinforced by the fact that Congress has expressly stripped federal district courts of subject matter jurisdiction to hear these types of claims.

First, the text of the INA provides that "[n]otwithstanding any other provision of law (statutory or nonstatutory), ***including section 2241 of Title 28,***

or any other habeas corpus provision, a petition for review filed with an appropriate court of appeals ... ***shall be the sole and exclusive means for judicial review*** of any cause or claim under [CAT]." 8 U.S.C. § 1252(a)(4) (emphases added). Likewise, when Congress passed FARRA, it took care to specify that "no court shall have jurisdiction to review ... any ... determination made with respect to the application of [CAT] ... except as part of the review of a final order of removal." FARRA § 2242(d). And FARRA also bars judicial review of the "regulations adopted to implement [CAT]," and assigns to the Executive Branch alone the duty to design procedures to "implement the obligations of the United States" under that treaty. *Id.*

Here, Petition asks this Court to enjoin Respondents from executing his removal order by removing him to a third-country other than Mexico, based on an as-of-now-theoretical withholding claim under CAT. Such a claim is barred by 8 U.S.C. § 1252(a)(4). And to the extent Petitioner challenges DHS's determination regarding the proper application of CAT to third country removals, embodied in its current removal policy guidance letter, such a claim is barred by FARRA § 2242(d). Put another way, 8 U.S.C. § 1252(a)(4) identifies a type of legal action—"any cause or claim under [CAT]"—and specifies that the "sole and exclusive" way that claim may be heard in court is through a petition for review filed in a court of appeals. If a litigant attempts to raise such a claim through another procedural vehicle—such as a habeas action in district court—the statute states that judicial review is not available. *See Kapoor v. DeMarco*, 132 F.4th 595, 608 (2d Cir. 2025) ("Section

1252(a)(4) contains a clear statement of congressional intent to bar all habeas jurisdiction over CAT claims... ."); *Khouzam v. Attorney General of U.S.*, 549 F.3d 235, 245 (3d Cir. 2008) ("We find that litigation over the Government's use of this CAT authority is appropriately deemed to fall within the broad ambit of 'any cause or claim under CAT'."); *J.A.V. v. Trump*, 781 F. Supp. 3d 535, 564 (S.D. Tex. May 1, 2025) (concluding that 8 U.S.C. § 1252(a)(4) bars "consideration of Convention-based arguments in a habeas proceeding").

Similarly, Petitioner's challenge to DHS policy is barred because Congress expressly stated in FARRA that "no court shall have jurisdiction to review ... any ... determination made with respect to the application of [CAT]." FARRA § 2242(d); *see also Mironescu v. Costner*, 480 F.3d 664, 676 (4th Cir. 2007) ("Except in the context of immigration proceedings, [FAARA] § 2242(d) flatly prohibits courts from 'considering ... claims' raised under the CAT or [FARRA]. This preclusion plainly encompasses consideration of CAT and [FARRA] claims on habeas review."); *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (explaining that, under FARRA, district courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee").

Moreover, to the extent that Petitioner attempts to premise his request for injunctive relief on something besides CAT, Congress has removed this Court's jurisdiction through 8 U.S.C. § 1252(b)(9) and (g). Section 1252(b)(9) mandates that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken

or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order." 8 U.S.C. § 1252(b)(9). It further strips district courts of "jurisdiction, by habeas corpus . . . or by any other provision of law," to review such questions except in that context. *Id.* And "no court," even a federal court of appeals, "shall have jurisdiction to hear any cause or claim" that arises from "the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g); *see also E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021) (courts lacked jurisdiction to hear challenge to "DHS's decision to execute [petitioner's] removal order while she seeks administrative relief").

3. Petitioner's Request for Injunctive Relief Fails on Its Merits as a Matter of Law.

Finally, Petitioner's claim for injunctive relief fails on the merits. Petitioner objects to the Government's reliance on country-wide assurances in executing removals to a country authorized under 8 U.S.C. § 1231(b)(1)(C)(iv) and (b)(2)(E)(vii). (Petition ¶12.) Such an argument has no basis.

Petitioner asks the Court to enjoin Respondents from executing a third-country removal based on his (rather cynical and self-serving) position that he "would likely have a fear of return ***to any country the Government may seek to designate***." (Petition ¶39 (emphasis added); *see also id.* at Prayer for Relief, 27.) In other words, Petitioner claims the government would violate CAT by removing him to any country in the world—whether that be Canada, Sweden, or Guatemala—unless it provides him an individualized hearing to assess an as-of-now theoretical

fear claim.[10] Notably, nothing is preventing Petitioner from—right now—asserting a fear claim as to any country. 8 C.F.R. § 1003.2(c) (permitting aliens to move to reopen proceedings to seek additional protections). He does not need to wait.

The Supreme Court has made clear that the "Judiciary is not suited to second-guess ... determinations" by the Executive Branch concerning the likelihood that an alien will be persecuted or tortured in another country. *Munaf v. Geren*, 553 U.S. 674, 702 (2008). Such determinations by immigration officials are conclusive and not subject to judicial review. *Id.* at 702–03; *see also Kiyemba*, 561 F.3d at 514 (Kavanaugh, J.) ("Under *Munaf*, however, the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee."). While Petitioner asserts a Due Process right to an individualized hearing, the Supreme Court has repeatedly held that the due process rights of illegal aliens are no greater than "[w]hatever the procedure authorized by Congress" and that "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *DHS v. Thuraissigiam*, 591 U.S. 103, 138–39 (2020).

VI. CONCLUSION

For these reasons, Respondents respectfully request that the Court deny Petitioner's TRO Motion and dismiss the Petition without prejudice.

---

[10] *But see Lozano-Zuniga v. Lynch*, 832 F.3d 822, 830 (7th Cir. 2016) (explaining that applicants for CAT protection ace a "high bar for relief" given that the torture must be "inflicted by or at the behest of, or with the consent or acquiescence of, a public official"); *Raghunathan v. Holder*, 604 F.3d 371, 378 (7th Cir. 2010) (explaining that "generalized conditions affecting large segments of a population do not ... prove that an individual faces persecution" in another country).

Respectfully submitted this 28th day of November, 2025.

BRAD D. SCHIMEL
United States Attorney

By: */s/ Aaron R. Wegrzyn*

AARON R. WEGRZYN
Assistant United States Attorney
Wisconsin Bar No. 1094262
Office of the United States Attorney
Federal Building, Room 530
517 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 297-4296
Fax: (414) 297-4394
Email: aaron.wegrzyn@usdoj.gov