UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Carlos Antonio Solis Nolasco [redacted] *Petitioner*, v. Kristi Noem, *et al.*, *Respondents.*	Case No. 8:25-cv-03847-GLR

REPLY MEMORANDUM IN OPPOSITION TO RESONDENTS' MOTION TO DISMISS AND IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

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Introduction

In March 2024, Petitioner was granted withholding of removal to El Salvador, the only country in which he has any claim to citizenship or legal immigration status. After the government determined that Petitioner could not be removed to any other country, they released him from detention on an Order of Supervision and granted him legal employment authorization. Over a year later, Respondents rearrested Petitioner without forewarning or any violation of his conditions of supervised release and are detaining him under inhumane conditions far from his family, because they claim without evidence that Mexico is now willing to accept him for removal.

This Court has already rejected the precise theory Respondents advance here to justify Petitioner's re-detention. In *Cordon-Salguero v. Noem*, the government argued—as it does now—that re-detention coupled with a notice naming Mexico sufficed to reset the *Zadvydas* clock and justify renewed custody.[1] The Court flatly disagreed, making clear that re-detention does not reset the removal period or restart the *Zadvydas* clock, and that continued detention after the expiration of the removal period is lawful only if supported by evidence of real, ongoing efforts toward effectuating removal. *Id.*

Further, as early as November 25, 2025, Petitioner expressed a claim of fear of removal to Mexico. Yet, in the month since Respondents re-detained Petitioner, Respondents have yet to provide Petitioner the required fear interview.[2] And, *if* Respondents do ever provide Petitioner the

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[1] *Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR, Hr'g Tr. at 31-35 (D. Md. June 18, 2025) (hereinafter cited as "*Cordon-Salguero* Hr'g Tr."). A copy the transcript is attached hereto as Ex. A.

[2] All the while, Respondents repeatedly transferred Petitioner between detention facilities across multiple states without updating his location on the ICE Detainee Locator or providing notice to counsel through the ERO eFile system, despite multiple filed Forms G-28. *See* Ex. B (Declaration of Paola Flores Roman) ¶¶ 3–4, 7–11, 13–14. As a result, counsel and family received inconsistent and often contradictory information regarding Petitioner's whereabouts and were forced to rely on informal communications to determine his location. *Id.* These transfers occurred while Respondents were on notice of Petitioner's expressed fear of removal to Mexico and request for a

required fear interview, and the result of such interview is negative, Petitioners claim the right to remove Petitioner to Mexico without any further due process, and specifically without the right to review by an Immigration Judge ("IJ") which every other noncitizen facing analogous circumstances enjoys. For these reasons, Respondents' motion to dismiss should be denied and the petition for writ of habeas corpus should be granted.

Argument

I. Petitioner's Continued Detention Is Unlawful Under *Zadvydas* Because Removal Is Not Reasonably Foreseeable

Petitioner states a cognizable claim for relief under *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his continued detention no longer bears a reasonable relation to its sole permissible purpose: securing his removal from the United States. The statutory removal period expired long ago, and Respondents cannot lawfully restart that period through re-detention alone. Nor can they justify continued detention by pointing to speculative, unsubstantiated assertions that removal to a third country might someday occur. As numerous courts have recognized, *Zadvydas* requires a fact-based inquiry into whether removal is significantly likely in the reasonably foreseeable future, not a mechanical accounting of days in custody. Where, as here, Respondents have identified no accepting country, produced no travel documents, initiated no required fear-screening process, and failed to articulate any concrete steps toward execution of the removal order, detention exceeds the bounds authorized by § 1231(a)(6) and violates due process.

A. As this Court made clear in *Cordon-Salguero*, the removal period has not reset due to re-detention.

reasonable fear interview, yet Respondents failed to initiate the required referral to USCIS. *Id.* ¶¶ 5–6, 9–10. In addition, Petitioner was confined in inhumane conditions for nearly a month following his November 22, 2025 arrest, during which he was not permitted to change clothes, shower, or receive adequate food. *Id.* ¶¶ 12–14.

Respondents agree that the removal period under 8 U.S.C. § 1231(a)(1) has long since expired, and Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6).[3] Yet Respondents urge this Court to deny the habeas corpus petition because Petitioner has been detained for approximately one month since his re-arrest. *See* Dkt. No. 8-1 at 10-11. Respondents' contention that Petitioner's habeas claim is premature because he has not spent 180 days behind bars in ICE detention since his rearrest misreads the statute and *Zadvydas*. Indeed, as this Court correctly concluded in *Cordon-Salguero*, the government cannot "arbitrarily trigger the removal period" via re-detention absent a finding that he is a risk to the community or unlikely to comply with the removal order. *See Cordon-Salguero* Hr'g Tr. at 33-34.

First, the plain text of the statute makes clear that the removal period has not reset in this case. As 8 U.S.C. § 1231(a)(2)(B) states,

> **Beginning of period**
>
> 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.
>
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

In other words, once the 90-day removal period has run, it resets only upon (i) a new administratively final removal order, or the prior order being reopened and then reentered; (ii) a final order from a reviewing Court of Appeals that had entered a stay of removal; or (iii) the noncitizen's release from criminal detention or confinement. None have occurred in this case.

[3] Here, the 90-day removal period set forth in 8 U.S.C. § 1231(a)(1)(A) commenced upon the date the removal became administratively final, April 29, 2024. and ran through July 28, 2024. *See* Dkt. 1-1; 8 U.S.C. §1231(a)(1)(A). The 180-day presumptively reasonable period under 8 U.S.C. § 1231(a)(6) as interpreted by *Zadvydas* expired on October 26, 2024. *See Zavvar v. Scott*, 2025 WL 2592543 at *4 (D. Md. Sept. 8, 2025).

Additionally, 8 U.S.C. § 1231(a)(1)(C) provides the only reason for the removal period to be tolled: "if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." Again, this did not occur here.

For this reason, courts agree that detention for the purpose of removal, without more, does not reset the removal period. *See, e.g.*, *Cordon-Salguero* Hr'g Tr at 33-34; *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *8 (W.D. La. Oct. 15, 2019), *R&R adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019), citing *Bailey v. Lynch*, 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) ("The removal period does not restart simply because an alien who has previously been released is taken back into custody.").

Second, the reasoning of *Zadvydas* explains why the 180-day period does not reset simply because a noncitizen is detained. As the *Zadvydas* court explained, the basic responsibility of the habeas court is to "ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Zadvydas*, 533 U.S. at 699. In so doing, the habeas court "should measure reasonableness primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal. Thus, if removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute." *Id.* at 699–700. Under *Zadvydas*, after 180 days have elapsed since the start of the removal period, even just one day of additional detention could be found unreasonable if not justifiable by the statute's basic purpose of assuring the noncitizen's presence at the moment of removal.

Here, Respondents have had over a year to work on removal, with Petitioner on close supervision throughout. As Judge Chuang noted in *Zavvar*,

> *Zadvydas* contemplated only the situation in which a noncitizen was continuously detained from the issuance of the removal order while efforts to execute the removal

> were ongoing, and did not directly address the situation presented here, where a noncitizen was not detained upon the issuance of the removal order, remained on release for 17 years, and only then was subjected to post-removal order detention for the first time. This distinction is significant because *Zadvydas* appears to have sought to balance the length of time a noncitizen would be held in detention against the need to afford the Government some time immediately following the issuance of the removal order to make and execute arrangements for removal. Because some if not most of those arrangements, such as securing approval from a foreign country to remove an individual to that nation, can likely be pursued even while the noncitizen is on release, that balance may well differ in circumstances where, before the period of detention began, the Government had a period of time . . . to make the arrangements for removal. Thus, there is, at a minimum, a reasonable argument that the six-month period runs continuously from the beginning of the removal period, even if the noncitizen is not detained throughout that period.

2025 WL 2592543, at *4; *see also Sagastizado v. Noem*, No. 5:25-cv-00104, Dkt. No. 29, *15 (S.D. Tex. Nov. 14, 2025) ("While the Supreme Court in *Zadvydas* set six months as a reasonable time period of detention in which the Government can be presumed to be working to effectuate removal in good faith, that presumption does not reset at the time a noncitizen is re-detained after being released on an order of supervision during which time the Government could have been taking steps to effectuate the noncitizen's removal."); *Tadros v. Noem*, 2025 WL 1678501, *3 (D.N.J. June 13, 2025); *Alam v. Nielsen*, 312 F. Supp. 574, 581–82 (S.D. Tex. 2018).

For the foregoing reasons, this Court should find that the 90-day Section 1231(a)(1) removal period, and the additional 90-day Section 1231(a)(6) post-removal period, both expired in 2024, and did not reset upon Petitioner's re-detention on November 22, 2025.

B. This habeas petition was not filed prematurely.

Even if the *Zadvydas* six-month presumptively reasonable period only counts days spent behind bars during the current period of detention, a proposition this Court firmly rejected in *Cordon-Salguero v. Noem*, that presumption of reasonableness would still be nonetheless rebuttable prior to that period's expiration. As Judge Abelson explained in *Medina v. Noem* ("*Medina I*"), 794 F. Supp. 3d 365, 375 (D. Md. 2025), "regardless of which *type* of presumption

applies to a *Zadvydas* claim, which this Court need not decide, what *Zadvydas* did make clear was that it was adopting a presumption—not a conclusive bar to adjudication of whether continued detention is authorized that lifts only after six months have elapsed." Judge Abelson explained that the presumption of reasonableness was merely the default, "but if a petitioner 'claims and *proves* . . . that his removal is not reasonably foreseeable'—including during the six-month period—the petitioner 'can overcome that presumption' and detention is no longer authorized." *Id.*, citing *Munoz-Saucedo v. Pittman*, 2025 WL 1750346, at *6 (D.N.J. Jun. 24, 2025).

Thereafter, in *Zavvar*, 2025 WL 2592543, at *6, Judge Chuang agreed that "even if the presumption is not rebuttable in the standard situation under which, as in *Zadvydas*, the six-month period consisted of continuous detention beginning on the date of the removal order, it must be rebuttable when, as here, the noncitizen was not initially detained and there was thus a substantial pre-detention period during which Respondents could have arranged for the removal." The *Medina I* decision has gained considerable traction, and has been favorably cited 15 times by courts from New York to Texas to California to Kentucky.

As the District of New Jersey explained in *Munoz-Saucedo*, the presumption of reasonableness is rebuttable within the initial 180 days: "Although the Supreme Court established a six-month period of presumptively reasonable detention, it did not preclude a detainee from challenging the reasonableness of his detention before such time." 2025 WL 1750346 at *5. The *Munoz-Saucedo* court went on to explain:

> Although some courts have read *Zadvydas* as creating a bright-line rule—one that effectively allows the government to detain a person for at least six months without judicial review, even if there was no possibility of removal—a close reading of *Zadvydas* does not support that interpretation. . . . The Court described the six-month mark as a 'guide,' not a rigid threshold. The Court did not say that the presumption is irrebuttable, and there is nothing inherent in the operation of the presumption that requires it to be irrebuttable. . . . Thus, the *Zadvydas* presumption . . . is rebuttable. The presumption of reasonableness is the default, but if a person

> 'can prove' that his removal is not reasonably foreseeable, then she can overcome that presumption. In practical terms, before the six-month period elapses, the government bears no burden to justify detention, and the petitioner must claim and prove, that his removal is not reasonably foreseeable.

Id. at *5-*6 (internal citations omitted). *See also Ali v. DHS*, 451 F. Supp. 3d 703, 706-07 (S.D. Tex. 2020) ("This six-month presumption is not a bright line, . . . and *Zadvydas* did not automatically authorize all detention until it reaches constitutional limits."); *Hoang Trinh v. Homan*, 333 F. Supp. 3d 984, 994 (C.D. Cal. 2018) ("The six-month *Zadvydas* presumption is just that—a presumption . . . not a prohibition on claims challenging detention less than six months.").

C. Respondents' only plan for removal is to remove Petitioner to Mexico; yet the evidence demonstrates removal is not reasonably foreseeable, and the writ of habeas corpus must be granted.

Turning to the merits of the *Zadvydas* test, Petitioner has a final, un-terminated grant of withholding of removal as to El Salvador—the only country on earth in which he holds any form of legal immigration status. Dkt. No. 1-1. To date, Respondents have not taken any steps to re-open and terminate his withholding of removal. 8 C.F.R. § 1208.24(f). Petitioner has also established that as recently as July 22, 2024, Respondents concluded he was not removable. Dkt. No. 1-2 at 3; *see* 8 U.S.C. § 1231(a)(7), ("No alien ordered removed shall be eligible to receive authorization to be employed in the United States unless the Attorney General makes a specific finding that—(A) the alien cannot be removed due to the refusal of all countries designated by the alien or under this section to receive the alien, or (B) the removal of the alien is otherwise impracticable or contrary to the public interest.").

The only changed circumstances that Respondents identify in their memorandum is that "his case is under current review by the government possibility of removal to Mexico." Dkt. No. 8-1 at 8. However, similar to *Cordon-Salguero*, there is no evidence that removal to Mexico is feasible, or that Mexico has *accepted* Petitioner for removal. Respondents have not identified any

travel document request, to whom such a request was sent, or where Petitioner allegedly stands in any processing queue. *Cf. Cordon-Salguero* Hr'g Tr. at 35. In short, there is no indication—beyond bare assertions—that removal to Mexico can or will occur in the reasonably foreseeable future.[4]

Moreover, to date, Respondents have yet to afford the fear interview required under their own policy despite the fact that Petitioner has already triggered the fear interview process by expressing a fear of return to Mexico via counsel on November 25, 2025, and various times thereafter. *See* Ex. B at. ¶ 6; Ex. C (fear interview request). Further, as analyzed *infra*, if Respondents ever decide to conduct the required fear interview, and the result is negative, due process requires IJ review. Therefore, even assuming that Respondents provided evidence that removal to Mexico is feasible, it remains to be determined whether Petitioner may be removed to Mexico—or whether he may *not* be removed to Mexico—in which case he will have established there is no likelihood of removal in the reasonably foreseeable future, since no other country is even on the table.[5]

As this Court has already held, where detention no longer bears a reasonable relation to its sole permissible purpose, the remedy is release under appropriate supervision—not additional time for the Government to attempt to justify detention retroactively. *Cordon-Salguero* Hr'g Tr. at 34-35. *Zadvydas* does not permit detention in the hope that circumstances might someday change.

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[4] A unilateral "notice" identifying Mexico as the country to which Respondents would *like* to remove Petitioner does not establish that they *can*. As this Court recognized in *Cordon-Salguero*, such a notice reflects only DHS's intention, not any agreement by a receiving country, nor any progress toward lawful removal. Without acceptance by Mexico and completion of required fear-screening procedures, the notice has no practical effect.

[5] Even if the Court were to conclude that Petitioner has not yet met his burden under *Zadvydas*, dismissal would not be the appropriate remedy. As Judge Abelson explained in *Medina I*, *Zadvydas* analysis is "inherently dynamic," and courts need not speculate about what future developments might alter the foreseeability of removal. 794 F. Supp. 3d 365, 381 (D. Md. 2025) (quoting *Clark v. Martinez*, 543 U.S. 371, 386 (2005)). Consistent with that approach, Judge Abelson denied dismissal and kept the case pending, ordering periodic status reports—an approach that proved warranted when the Government ultimately abandoned Mexico as a country of removal and habeas relief was granted. *Cruz Medina v. Noem ("Medina III")*, 2025 WL 3157608 (D. Md. Nov. 12, 2025). The same course is appropriate here: at minimum, the Court should deny Respondents' motion to dismiss, prohibit removal to Mexico absent Immigration Judge review of Petitioner's fear claim, and require a status report once the Mexico issue is resolved.

II. Due process requires that Petitioner be afforded a fear interview and Immigration Judge review of his risk of persecution and torture from removal to a third country.

Despite Petitioner's explicit expression of fear of removal to Mexico, Respondents have not referred his case to USCIS and no fear interview has been scheduled. But even assuming Respondents were to comply with their own third-country removal policy, *see* Dkt. No. 8-7, and belatedly conduct a fear interview and reach a negative determination, due process would still require review of that determination by an Immigration Judge.

Respondents do not dispute that if they had named Mexico as well as El Salvador *during* Petitioner's removal proceedings, he would have been entitled to have his claim of fear of removal to Mexico adjudicated by an IJ during his immigration court trial in 2018. As the court explained in *Sagastizado v. Noem*, 2025 WL 2957002, *11 (S.D. Tex. Oct. 2, 2025), "Had Respondents designated Mexico as the country of removal during Petitioner's initial removal proceedings under 8 U.S.C. § 1229a, he would have been provided the opportunity to apply for withholding of removal from Mexico directly before an IJ rather than complete a threshold fear-based screening." But Respondents did not breathe a word about Mexico at that time, instead springing it as a surprise over a year later. Due process requires that Petitioner be afforded the same process now that he would have been afforded then.

Petitioner has been lawfully working in Maryland on an Order of Supervision with valid employment authorization for over a year.[6] *See* Dkt. No. 1, 1-2. The additional procedure he requests, IJ review of his denied USCIS fear claim, is indisputably available to noncitizens who

[6] Respondents' assertion that Petitioner is a "known MS-13 gang member" is wholly unsupported. *See* Dkt. No 8-1. The government neither cites nor provides documentary evidence, sworn testimony, or adjudicated finding to substantiate this allegation. Indeed, the record contains no gang-related charges or convictions. The only offense ever attributed to Petitioner is a minor traffic infraction—driving without a license—which does not remotely suggest gang affiliation or violent conduct. "[V]ague allegations of gang association alone do not supersede the express protections afforded under the INA[.]" *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501, 507 n.2 (D. Md. 2025).

have just been caught crossing the border illegally, 8 C.F.R. § 1003.42; and is indisputably available to noncitizens who have just been caught *re*-entering the United States illegally after a prior deportation, 8 C.F.R. § 1208.31(g). Respondents' claim that Petitioner is entitled to less due process than "an alien at the threshold of initial entry," *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020), simply because they designated Mexico as a country of removal *after* El Salvador and not *together with* El Salvador, holds no water. As the *Sagastizado* court explained, "Petitioner's argument that he cannot be entitled to lesser protections now than he would have been upon his initial entry or upon a future commission of felony illegal reentry into the United States carries significant weight." 2025 WL 2957002, at *11.

As the Fourth Circuit has explained, "[t]he procedural component of due process 'imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause.'" *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016), quoting *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "And when the government deprives a person of a protected liberty or property interest, it is obliged to provide 'notice and opportunity for hearing appropriate to the nature of the case.'" *Id.* at 741-42, quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). "The mere availability and utilization of some procedures does not mean they are constitutionally sufficient. That is, the Fifth Amendment guarantees 'due process of law,' not just 'some process of law.'" *Id.* at 743.

The *Mathews* standard balances: "(1) the nature of the private interest that will be affected, (2) the comparative risk of an erroneous deprivation of that interest with and without additional or substitute procedural safeguards, and (3) the nature and magnitude of any countervailing interest in not providing additional or substitute procedural requirements." *Id.* at 742. As the Southern District of Texas held in *Sagastizado* and this District held in *Medina v. Noem ("Medina II")*, 2025

WL 2841488 (D. Md. Oct. 7, 2025), Respondents' third-country removal protocols fail the *Mathews* test because they do not allow for IJ review of a claim of fear of removal.

On the first *Mathews* prong, Petitioner's private interest in "not being removed to a country where he alleges he would face persecution or torture" is "precisely the type of interest that courts consistently have held is significant enough to justify procedural protections to ensure that individuals who are actually entitled to withholding of removal under § 1231(b)(3) or the Convention Against Torture receive such protection." *Medina II*, at *6. Petitioner's declaration (Ex. C at 2) explains why he considers "removal to Mexico would be a death sentence."

On the second *Mathews* prong, a hearing before an IJ would undoubtedly provide additional probative value; this is why Respondents afford IJ review in every other analogous circumstance. As the *Medina II* court found, at *7:

> [T]he question is whether a decision by a single asylum officer, rather than the opportunity for review by an immigration judge, is sufficient to adequately minimize the risk of an erroneous rejection of a fear-of-persecution claim. The Court need look no further than DHS regulations themselves to conclude that, where a person alleges that he would be persecuted or tortured if removed to a particular country, a single review by an asylum officer creates an unacceptably high risk of erroneous deprivation. DHS regulations address various scenarios where individuals may seek protection from removal based on a fear of how they will be treated in another country, and in every scenario addressed by those regulations they entitle noncitizens to *de novo* review by an immigration judge of negative asylum officer determinations—from applicants for admission who are found inadmissible, to reinstated removal orders, Even in the context of *expedited* removal, an applicant who indicates either an intention to apply for asylum or a fear of persecution may appeal to an immigration judge, who can take further evidence and shall make a de novo determination.
>
> In short, there are no regulations that provide for circumstances under which USCIS is given the authority to conduct fear-screening interviews without providing for independent review of that screening by an IJ.

See also Sagastizado, 2025 WL 2957002, at *12.

Finally, on the third *Mathews* prong, Respondents cannot complain of excessive burden in extending to Petitioner a procedure that already exists in so many other contexts, and that generally must take place within a mere ten days pursuant to 8 C.F.R. § 1208.31(g). *See also Medina II*, at *7-*8; *Sagastizado*, 2025 WL 2957002, at *12. Here, Petitioner merely seeks IJ review if he receives a negative fear determination, following which he would be allowed to file a full application for withholding of removal only if he *passes* the IJ review.[7]

III. The Supreme Court's stay of the *D.V.D.* classwide preliminary injunction does not tie this Court's hands.

Respondents note that the Supreme Court has stayed the classwide preliminary injunction in *D.V.D. v. DHS*, 145 S. Ct. 2153 (U.S. 2025). However, as this Court concluded, "the DVD preliminary injunction only covers removal and the procedures by which the government must give notice and an opportunity to seek relief therefrom, does not cover issues related to detention pending such procedures." *Cordon-Salguero* Hr'g Tr. at 31. Accordingly, as to Respondent's claims as to his detention are not implicated by *D.V.D.*

Further, the *D.V.D.* majority chose not to provide any reasoning for its entry of a stay, and the dissent suggests that the reason may well have been dissatisfaction with the class-action vehicle, an issue not relevant to this case. *Id.* at 2160-61. To read substance into the stay decision would be pure speculation. *See Nguyen*, 2025 WL 2419288, at *22 ("The Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class's likelihood of success on its due process and APA claims."), citing *Merrill v. Milligan*, 142 S. Ct. 879, 879 (2022)

[7] The Eastern District of Virginia also granted a preliminary injunction on this claim. *See Rivas Rojas v. Noem*, No. 1:25-cv-1624-PTG-WBP, Dkt. No. 18, at 2 (E.D. Va. Nov. 17, 2025) (prohibiting third-country removal to Mexico unless and until an IJ reviewed the USCIS denial).

(Kavanaugh, J., concurring) ("The stay will allow this Court to decide the merits in an orderly fashion . . . [t]he Court's stay order is not a decision on the merits."). As *Nguyen* explained, "This Court cannot ascertain from the Supreme Court's emergency order whether it found the government likely to succeed on its jurisdictional or substantive claims. This distinction is especially important in this case, where one of the Government's primary arguments—that the *D.V.D.* court had no power to enter *classwide* injunctive relief—would have no bearing on the merits of individual habeas petitions." *Id.* at *23.[8]

Nor does the *D.V.D.* case bar this Court from deciding the instant claim as a matter of jurisdiction. Since there is no "final judgment on the merits of an action" in *D.V.D.*, only a (stayed) preliminary injunction ruling, there is no preclusive effect. Res judicata requires, *inter alia*, that "the prior action was concluded by a final judgment on the merits[.]" *Houston Pro. Towing Ass'n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016). Likewise, collateral estoppel requires "an issue of ultimate fact [to be] determined by a valid and final judgment." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970). A preliminary injunction is not a final judgment and therefore does not cause a res judicata or collateral estoppel effect. *Sagastizado*, 2025 WL 2957002, at *7.

Since the *D.V.D.* case remains pending and has not resulted in a final judgment, Respondents cannot show that this Court is *prohibited* from ruling for Petitioner; their best argument is for abstention: that, as one court found, "[b]asic principles of comity and judicial economy" militate against this Court taking jurisdiction. *I.V.I. v. Baker*, 2025 WL 1519449, at *2 (D. Md. May 27,

[8] *See also Medina II*, at *8 ("[T]he Supreme Court in *D.V.D.* provided no reasoning for its entry of the stay and whether it came to that determination based on the merits or procedural posture of the case. The closest evidence this Court has of the reasoning behind the majority's decision is the dissent's conclusion that the majority's decision to stay likely was based principally on dissatisfaction with the case's posture as a class action[.]"); *Santamaria Orellana v. Baker*, 2025 WL 2841886, at *11 (D. Md. Oct. 7, 2025) ("[B]ased on the presently available guidance from the Supreme Court, there is an insufficient basis upon which to reach a conclusion on which aspects of *D.V.D.* the Supreme Court has rejected, whether they relate to the class certification, the due process claim, or otherwise.").

2025), citing *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982). But as the Ninth Circuit explained in *Pacesetter Systems*, "this 'first to file' rule is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration." 678 F.2d at 95. To the contrary, "[t]he Supreme Court has emphasized that the solution of these problems involves determinations concerning wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation, and that an ample degree of discretion, appropriate for disciplined and experienced judges, must be left to the lower courts." *Id.*; *see also Smiley v. Ariz. Beverages, LLC*, 2024 SL 327044, at *2 (D. Md. Jan. 29, 2024) (the first-to-file rule "yields to the interests of justice, and will not be applied when a court finds compelling circumstances supporting its abrogation[.]"). "The decision to invoke the first-filed rule is an equitable determination that is made on a case-by-case, discretionary basis." *Nutrition & Fitness, Inc. v. Blue Stuff, Inc.*, 264 F. Supp. 2d 357, 360 (W.D.N.C. 2003).

This Court can find compelling circumstances sufficient to overcome the concededly important interests in comity and judicial economy. Without this Court's intervention, Petitioner may be deported to Mexico without any IJ ever reviewing whether will be persecuted in that country. Petitioner fears persecution in Mexico, *see* Ex. C at 2, but given his lack of immigration status in Mexico, he also fears that Mexico will quickly send him on to El Salvador (chain refoulement), where he has already suffered torture at the hands of Salvador authorities and it has already been judicially determined that he *will* be persecuted in the future. Dkt. No. 1-1; Ex. D at ¶¶ 15-17. This fear is not unfounded.[9] Once Petitioner is removed to Mexico, irreparable harm may occur in that

[9] *See Santamaria Orellana v. Baker*, 2025 WL 2841886, at *12 (D. Md. Oct. 7, 2025) ("Indeed, in several recent third-country removals, the third country promptly deported noncitizens to the very countries to which the United States had withheld removal due to the risk of persecution, torture, or death. . . . In one such instance in 2025, a noncitizen who had been granted withholding of removal to his home country of Guatemala based on a fear of torture was instead deported to Mexico, only to be deported from Mexico to Guatemala."); Ex. E at ¶¶ 15-17 (redacted declaration detailing a Salvadoran national who upon removal to Mexico was promptly removed to El Salvador and detained).

this Court may lack jurisdiction to order the government to ask Mexico not to re-deport him to El Salvador. *D.A. v. Noem*, 2025 WL 2646888 (D.D.C. Sept. 15, 2025).

As the *Sagastizado* court found, "there is a low burden on the Court to familiarize itself with ongoing factual circumstances to supervise the narrow injunctive relief Sagastizado requests. Additionally, Sagastizado seeks review of his RFI by an IJ, a request that can be effectively provided to him as an individual without requiring that any actions be taken that could alter other class members' entitlements and result in confusion while the litigation in *D.V.D.* remains pending. For those reasons, the Court finds that the circumstances of this case favor allowing Sagastizado to bring his individual claims while the class-wide relief remains pending." 2025 WL 2957002, at *8.

Conclusion

For the foregoing reasons, Respondents' motion to dismiss should be denied and the petition for writ of habeas corpus should be granted.[10]

Respectfully submitted,

/s/ Simon Y. Sandoval-Moshenberg Date: December 22, 2025

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[10] Separately, Respondents' evidentiary filing, Dkt. No. 8-3, reveals that Petitioner's Notice of Revocation was signed by a Field Office Director rather than the Executive Associate Commissioner, without making any findings required by 8 C.F.R. § 241.4(*l*)(2). *See* Dkt. No. 8-3. In *Cordon-Salguero*, this Court found a revocation "unlawful" where the notice was signed by a subordinate "with no proof of any delegated authority to do so" and where the specific findings required by the regulation were absent. *Cordon-Salguero* Hr'g Tr. at 35-36; *see also Santamaria Orellana v.* 2025 WL 2841886 *3 (holding revocation unlawful where Respondents "do not claim that [the Executive Associate Director] actually made the decision to revoke or even that she was aware of th[e] decision," and where there was "no documentation or even a claim" that a Field Office Director determined that revocation was in the public interest or that circumstances did not reasonably permit referral as required by 8 C.F.R. § 241.4(l)(2)).

Certificate of Service

I, Simon Sandoval-Moshenberg, hereby certify that on this 22nd day of December, 2025, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants.

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