UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEAN DUPONT, Petitioner, v. HAMILTON MESERVE, et al., Respondents.	No. 2:25-cv-00593-JAW

RETURN AND RESPONSE TO ORDER TO SHOW CAUSE IN OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents,[1] by and through undersigned counsel, oppose Petitioner Jean Dupont's[2] Petition for a Writ of Habeas Corpus. Dkt. #1, November 24, 2025 (the "Petition" or "Pet."). Petitioner is presently detained at the Two Bridges Regional Jail ("Two Bridges") in Wiscasset, Maine, in U.S. Immigration and Customs Enforcement ("ICE") custody. *See* Attachment 1, Decl. of ICE Asst. Field Office Dir. Keith Chan ("Chan Decl.") ¶ 5, December 4, 2025. The true cause of the detention, *see* 28 U.S.C. § 2243, is pursuant to 8 U.S.C. § 1231 owing to Petitioner being subject to a final order of removal. Pet. ¶¶ 61, 80. In support, Respondent submits as follows.

I. Introduction

The Petition fails the requirements of *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Pet. ¶¶ 14, 41-49 (asserting *Zadvydas* claim). Petitioner cannot establish any "good

[1] For purposes of this return, the Government refers to "Respondents" as the federal officials sued here in their official capacities: David Wesling, the Acting Director of the Boston Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations; Todd Lyons, the Acting Director of U.S. Immigration and Customs Enforcement; Kristi Noem, U.S. Secretary of Homeland Security; and Pamela Bondi, U.S. Attorney General. No position is taken with regard to the remaining non-federal respondents.
[2] Jean Dupont is a pseudonym. *See* Dkt. 1 at 1.

reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Additionally, Petitioner cannot establish that his due process rights would be violated were he to be removed to a third country without the additional procedural hurdles he asks the Court to impose (Petitioner's "third country removal claim").

II. Factual Background

Petitioner's habeas application under 28 U.S.C. § 2241 arises from his final order of removal and related detention pursuant to 8 U.S.C. § 1231. His *Zadvydas* claim asks this Court to find that his "detention violates both substantive and procedural due process." *See* Pet. ¶ 90. His third country removal claim, which he presents as an alternative to the relief he seeks pursuant to his *Zadvydas* claim—namely, release from custody—requests that the Court fashion additional procedures before allowing Respondents to remove Petitioner to any third country. *See* Pet. at 19-20.

On January 13, 2022, U.S. Customs and Border Protection ("CBP") admitted Petitioner to the United States at Chicago O'Hare International Airport in Chicago, Illinois as a Non-Immigrant Student with an F-1 visa. Chan Decl. ¶ 7. In May 2024, Petitioner completed his course of study at in *Id.* ¶ 8. He was required to depart the United States within 60 days of course completion. *Id.* However, he remained in the United States beyond that period without authorization. *Id.*

Petitioner has been detained by ICE since January 2025. Pet. ¶¶ 15, 37-40. 13. On January 23, 2025, the Immigration Judge ("IJ") in Petitioner's case held a custody redetermination (bond) hearing under 8 U.S.C. § 1226(a), after which the IJ denied the Petitioner's request for a change in custody status because the Petitioner is a danger to

the community. Chan Decl. ¶ 13. Petitioner was found removable by an Immigration Judge on March 13, 2025, but granted Withholding of Removal pursuant to 8 U.S.C. § 1231(b)(3). *Id.* ¶¶ 46-47. The Withholding of Removal in this case prohibits removal of Petitioner to Rwanda, *see id.* ¶ 47, but does not prohibit removal to a "third county," *see* 8 U.S.C. § 1231(b)(2)(E). Petitioner's removal became final that same day, as Petitioner and the Government waived appeal. Pet. ¶ 48. Accordingly, his removal became final on March 13, 2025. *Id.*

ICE conducted a Post Order Custody Review ("POCR") pursuant to 8 C.F.R. § 241.4 on June 15, 2025, but decided to continue to detain Petitioner while it sought a third country of removal. Chan Decl. ¶ 17. Petitioner was interviewed on September 8, 2025 as part of a review of custody status, *id.* at ¶¶ 18-19, and on September 29, 2025, ICE initiated the 180-day POCR review per the applicable regulations, *id.* ¶ 21. Th POCR review remains pending at this time. *Id.*

As Petitioner notes, Petitioner presently is facing state criminal charges related to a fight that took place in January 2025. *See id.* ¶ 52. Specifically, Petitioner was arrested on January 5, 2025, in South Portland, Maine, for aggravated assault and aggravated reckless conduct. Chan Decl. ¶ 9. According to Petitioner, a hearing in his state criminal matter is scheduled for December 19, 2025. Pet. ¶ 53.

Petitioner filed the instant Petition on November 24, 2025. An Order to Show Cause issued the next day, directing Respondents to respond by December 3, 2025. Dkt. 9. Respondents requested and subsequently received an extension of their response deadline to December 4, 2025, at 12:00 p.m. Dkt. 11. Also on November 25, 2025, the Court entered a temporary restraining order enjoining Respondents from removing Petitioner from the District of Maine pending further order of the Court. Dkt. 8.

III. Argument

The Petition should be denied because Petitioner has not "provide[d] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S.678, 701 (2001). Additionally, this Court lacks jurisdiction to adjudicate Petitioner's claims with respect to third-country removal, and even if it did have jurisdiction to consider such claims, they would fail on the merits.

1. *Petitioner's* Zadvydas *Claims*

Petitioner filed his Petition eight months and eleven days after his removal became final—approximately two and a half months past the "six-month window following the removal period during which a noncitizen's detention is presumptively reasonable" under *Zadvydas. G.P. v. Garland*, 103 F.4th 898, 901 (1st Cir. 2024). But of course, the six-month presumption cited by Petitioner does not "mean that every alien not removed must be released after six months." *Zadvydas*, 533 U.S. at 701. "To the contrary," as the Supreme Court explained, "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.*

As indicated in the Chan declaration, ICE is actively seeking Petitioner's removal to a third country. Chan Decl. ¶ 20. Additionally, it bears noting that Petitioner has been charged with a violent crime. *See Misigaro v. Hyde*, No. 2:25-cv-00538-LEW, 2025 WL 3140715, at *3 (D. Me. Nov. 10, 2025) (noting relevance of "quite serious state court charges pending against Petitioner" in evaluating habeas claim). Furthermore, Petitioner's POCR review remains pending, pursuant to which the Removal and International Operations unit will review Petitioner's custody status and determine if he should be released. Chan Decl. 21; *see Misigaro*, 2025 WL 3140715, at *3 (noting

relevance of "the pendency of an administrative review process that should conclude shortly" in evaluating habeas claim).

Petitioner does not allege any other facts that suggest that there is no significant likelihood that he will be removed. ICE is actively seeking out third countries to which Petitioner can be removed. That they have not yet been successful does not imply that there is "no significant likelihood" that they will be successful in the near future. As for his ongoing custody, Petitioner was interviewed as part of a Review of Custody Status in September 2025. No decision has yet been made regarding this review. If the result of the review is that Petitioner is recommended for release, this would moot the present action. Accordingly, Respondent would urge the Court to refrain from ruling on the Petition until this other avenue of administrative relief has been exhausted. *See Misigaro*, 2025 WL 3140715, at *3.

2. *Removal to a Third Country*

Petitioner maintains that his removal "to any third country . . . without first providing Petitioner with meaningful notice and a meaningful opportunity to seek protection under the mandatory provisions of 8 U.S.C. 1231(b)(3) and the FARRA, would violate Petitioner's statutory and due process rights." Pet. ¶ 94. Petitioner invites the Court to craft new rules regarding third country removal proceedings. The Court should decline this invitation.

a. Legal Framework and Background

Aliens subject to removal orders need not be removed to their native country. Generally, with certain limits, aliens ordered removed "may designate one country to which the alien wants to be removed," and DHS generally "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A); *see id.* § 1231(b)(2)(C) (permitting DHS to

"disregard a designation" in various circumstances). In certain circumstances, DHS will not remove the alien to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In such a case, the alien generally is removed to the alien's country of nationality or citizenship, unless that country "is not willing to accept the alien[.]" *Id.* § 1231(b)(2)(D). If an alien cannot be removed to the country of designation or the country of nationality or citizenship, then the government may consider other options, including "[t]he country from which the alien was admitted to the United States," "[t]he country in which the alien was born," or "[t]he country in which the alien last resided[.]" *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is "impracticable, inadvisable, or impossible," then the alien may be removed to any "country whose government will accept the alien into that country." *Id.* § 1231(b)(2)(E)(vii); *see Jama v. ICE*, 543 U.S. 335, 341 (2005). In addition, DHS "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

While the INA provides for third country removals, it does not delineate a particular process for carrying out those removals. *See* 8 U.S.C. § 1231(b). More specifically, Congress did not provide a particular process for ensuring that third country removals remain consistent with the United States's obligations under the Convention Against Torture ("CAT"). Instead, it delegated to the Executive Branch the responsibility for developing such procedures. *See* 8 U.S.C. § 1231 note (providing that

the "heads of the appropriate agencies shall prescribe regulations to implement" the United States's CAT obligations).

On March 30, 2025, DHS issued the March Guidance, clarifying its "policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the [INA] to countries other than those designated for removal in those removal orders." *See* Attachment 2, Guidance Regarding Third Country Removals, at 1 (the "March Guidance"). The March Guidance distinguishes between removals to countries that have provided credible diplomatic assurances that aliens removed there will not be persecuted or tortured, and removals to countries that have not done so. *Id.* at 1-2. For countries that have provided such assurances, "the alien may be removed without the need for further procedures." *Id.* at 2. For countries that have not, DHS must first inform the alien of removal to the country. *Id.* If the alien "affirmatively express[es] a fear of persecution or torture" in the country of removal, an immigration officer will refer the alien to USCIS. USCIS will conduct a prompt screening to determine whether the alien "would more likely than not be" be persecuted or tortured in the country of removal. *Id.* If the alien fails to satisfy this standard, he "will be removed." *Id.* If he does satisfy it, he will be referred for proceedings before the Immigration Court. *See id.* "Alternatively, ICE may choose to designate another country for removal," and start the process afresh. *Id.*

b. This Court Lacks Jurisdiction Under 8 U.S.C. § 1252 and FARRA To Consider Petitioner's Arguments

The Court lacks jurisdiction to consider Petitioner's claims challenging Respondents' third country removal procedures. First, section 1252(g) plainly bars Petitioner's attempt to challenge the "execution" of his removal order. Second, sections

1252(a)(4), (a)(5), and (b)(9) channel Petitioner's claims into his immigration court proceedings and, ultimately, to the courts of appeals via a petition for review. Third, the Court clearly lacks jurisdiction to review Respondents' implementation of the CAT.

i. *Petitioner's claims are barred by section 1252(g).*

Petitioner's claims, which seek to prohibit ICE from executing valid final orders of removal, are explicitly barred by section 1252(g), which eliminates district court jurisdiction over claims arising from the government's actions to execute removal orders. Section 1252(g) bars claims arising from the three discrete actions identified in section 1252(g), including, as relevant here, the decision or action to "execute removal orders." Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

Petitioner's claims arise entirely from actions taken to "execute removal orders," 8 U.S.C. § 1252(g)—namely, to remove him to a third country without the additional process he demands—and thus those claims "fall[] squarely within" the INA's jurisdictional bar, AADC, 525 U.S. at 487. Petitioner seeks an order from this court enjoining his removal to any third country until he is provided ten days' notice, a reasonable fear interview, reopening of his removal proceedings in Immigration Court

(if he is found to have a reasonable fear of removal to the third country), or fifteen days to file a motion to reopen with the Immigration Court (if he is found to not have a reasonable fear of removal to the third country). Pet. at 19-20. However, courts of appeals have consistently held that claims like Petitioner's seeking (what amounts to) a stay of removal—even temporarily to assert other claims to relief—are barred by § 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's authority to execute a removal order rather than its execution of a removal order."); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that section 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims).[3]

The Ninth Circuit's decision in *Rauda* and the Sixth Circuit's decision in *Hamama* are particularly relevant. In *Rauda*, the Ninth Circuit considered whether § 1252(g) barred the alien's claim seeking to temporarily prevent his removal while his motion to reopen his removal proceedings raising "new developments" regarding his CAT claim. 55 F.4th at 776-77. Plaintiff claimed that the administrative procedures

[3] *See also E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (upholding jurisdictional bar despite argument that petitioner was challenging DHS's legal authority, not its "discretionary decisions"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (upholding jurisdictional bar because "the discretion to decide whetherto execute a removal order includes the discretion to decide when to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (upholding jurisdictional bar against constitutional claims arising from the execution of removal order because and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

associated with his motion to reopen were constitutionally insufficient because they did not guarantee judicial review of these "new developments" prior to his removal. *Id.* He argued that section 1252(g) did not apply to ICE's allegedly unlawful decision to remove him now. *Id.* at 777. The Ninth Circuit held that section 1252(g) "does not include any temporal caveats" and nonetheless barred plaintiff's claims.

Similarly, in *Hamama*, a class of Iraqi nationals claimed that ICE could not enforce their years-old removal orders without first providing them an opportunity to reopen their proceedings and make new fear-based clams. The Sixth Circuit held that "[u]nder a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to review." 912 F.3d at 874.

Petitioner's claim is no different than those rejected by numerous courts of appeals. Petitioner seeks to prevent his removal based on an assertion that his removal, at least temporarily, is unlawful while he seeks to have any fear claims adjudicated. But section 1252(g) contains no exception for such claims, regardless of their nature or merit, and therefore, this Court should find that it has no jurisdiction to consider Petitioner's third country removal claim, which seeks to block the execution of his removal order and force it to be executed in a different way.

ii. *Petitioner's claims are also barred by section 1252(a)(5) and (b)(9).*

Section 1252(a)(5) and (b)(9) also bar Petitioner's third country removal claim. As discussed above, Congress has explicitly and unambiguously stripped district courts of jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal

orders." 8 U.S.C § 1252(g). To the extent claims arising from these distinct actions are reviewable at all, they are only reviewable along with any other "questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien"—in a petition for review of a "final order" of removal. 8 U.S.C. § 1252(b)(9). And that petition is the "sole and exclusive means for judicial review" of such claims. 8 U.S.C § 1252(a)(5).

The First Circuit's decision in *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007) is instructive. It recognized that § 1252(b)(9) bars claims that can be "raised efficaciously within the administrative proceedings delineated in the INA." *Id.* at 11; see also 8 U.S.C. § 1231(h) ("Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."). And that includes Petitioner's claim here.

Indeed, the March Guidance makes clear that Petitioner's third country removal claim is foreclosed by § 1252(b)(9) because the Guidance establishes safeguards and calls for sufficiently reliable diplomatic assurances that aliens who will be removed to a third country will not be persecuted or tortured. The alien may be removed to the third country if that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured and the State Department concludes that those assurances are credible. If diplomatic assurances are absent or the State Department determines the assurances are not credible, the Guidance provides a process under which Petitioner can assert fear of removal to the third country to DHS and have that claim considered by USCIS. If USCIS determines that the alien would more likely than not be persecuted on account of a statutorily protected ground or tortured in the third country, USCIS will refer the matter to the Immigration Court in

the first instance; for cases where the alien was previously in proceedings before the Immigration Court, ICE Office of the Principal Leal Advisor (OPLA) may file a motion to reopen for further proceedings for the sole purpose of determining eligibility for protection from removal or, alternatively, ICE may choose to designate another country for removal.

Separate from this Guidance, Petitioner may—at any time—move to reopen proceedings to assert new fear claims regarding removal to a third country. *See, e.g.*, 8 U.S.C. § 1229a(c)(7) (allowing a motion to reopen within 90 days after removal order becomes administratively final); 8 C.F.R §§ 1003.2(c), 1003.23(b) (allowing a motion to reopen after 90 days under immigration court or BIA's *sua sponte* authority); *Charles v. Garland*, 113 F.4th 20, 23 (1st Cir. 2024) (describing the *sua sponte* motion to reopen process under 8 C.F.R. § 1003.2 and providing for review of denials of such motions in limited circumstances).

Petitioner focuses on the lack of notice regarding the country of removal as if his fear depends on receiving that notice. It does not. From the outset, an alien knows to which specific countries they fear removal, and an alien need not await any DHS designation before seeking protection. They can seek withholding of removal or other protections from removal to those countries during their removal proceedings. Indeed, aliens are instructed to list any country where they fear removal in their initial removal proceedings. *See* U.S. Citizenship & Immigration Servs., DHS, Form I-589: Application for Asylum and for Withholding of Removal (Edition: Jan. 20, 2025) (asking alien to list and explain "any" country "to which [he] may be returned" where he fears "torture"); *see also* 8 C.F.R §§ 1240.10(f), 1240.11(c). Aliens can also move to reopen their proceedings to seek protection from removal to additional countries at any time, again without any

need to await any DHS designation of a country for third-country removal. And aliens can assert fear of removal to any country at any time, again with no need to wait for DHS to designate a country. To the extent Petitioner claims that due process requires notice of removal to the third country, he can also make that claim through the administrative process.

The challenge that Petitioner is attempting to bring is precisely the type of scenario Congress intended to preclude with section 1252(b)(9). This Court should give effect to Congress' plain intent and find that it has no jurisdiction to consider Petitioner's third country removal claim.

iii. *The Court lacks jurisdiction to review Respondents' implementation of the Convention Against Torture and to dictate additional procedures.*

The Court lacks jurisdiction over the third country removal claim because jurisdictional bars in the INA and FARRA specifically preclude this Court from reviewing "any cause or claim" under the CAT, including any "determination made" with respect to the application of CAT, and they also bar judicial review of any claims challenging Respondents' implementation of the United States' obligations under the CAT.

The INA provides that "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). Likewise, FARRA confirms 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." § 2242(d), 112 Stat. 2681-822; *see* 8 C.F.R. § 208.18(e). FARRA further bars judicial review of the "regulations adopted to implement [CAT]," and assigns to the Executive

alone the duty to design procedures to "implement the obligations of the United States" under that treaty. § 2242(d), 112 Stat. 2681-822.

The relief Petitioner seeks would run afoul of each of these limits. Petitioner's third country removal claim—which implicitly challenge DHS's existing procedures for certain CAT claims and the March Guidance—both concern the "application" of CAT and are a "cause or claim under [CAT]." Any such CAT-related claims can only be reviewed, if at all, in an appellate court through a petition for review from a final order of removal.

By seeking additional procedures beyond those already provided by the Government's implementation of the CAT, Petitioner's third country removal claim is plainly barred by the INA and FARRA and this Court should find that it lacks jurisdiction to consider Petitioner's arguments.

c. Petitioner's Third Country Removal Claim Fails on the Merits

Assuming *arguendo* that the Court had jurisdiction to hear Petitioner's third country removal claim, the claim would still fail because it is without merit. Respondents' procedures for carrying out removal to third countries are fully consistent with the statute and due process, and there is no legal basis for this Court to order that those procedures be supplemented with ones Petitioner would prefer.

Petitioner has a final order or removal. He has received the panoply of procedural safeguards and protections available to him in his prior immigration proceedings, including the opportunity to raise withholding of removal and CAT claims regarding any country, voice fears as to any potential countries of removal, and move to reopen past proceedings as new fears have arisen. The March Guidance explains that the government provides aliens like Petitioner with additional process before he is removed to a third country. That process, as detailed below, ensures that an alien will either be

sent to a country where the United States has received credible diplomatic assurance the alien will not be persecuted or tortured, or that the alien will be given notice and an opportunity to be heard regarding any fear as to his country of removal. *Id.* The Court should not second-guess the details of these procedures under the guise of constitutional due-process analysis.

As noted, the March Guidance provides that an alien may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* at 2-3. If the State Department finds that country's assurances credible, "the alien may be removed without the need for further procedures." *Id.* For aliens being removed to a third country not covered by an adequate assurance, the March Guidance states that DHS will first inform the alien of removal to that country. March Guidance at 1. If the alien affirmatively states a fear of removal to that country, USCIS will generally screen the alien within 24 hours of referral from the immigration officer to determine whether he "would more likely than not" be persecuted or tortured if sent to that country. *Id.* If not, the alien will be removed; if so, the alien will be referred to the immigration court—or, if appropriate, the government "may choose to designate another country for removal." *Id.*

Neither the statute nor the Constitution require anything further. The Supreme Court has held that courts cannot second-guess the Executive's "conclusive" determination that a country will not torture a person upon his removal. The March Guidance satisfies the minimum requirements of due process.

i. *The Court should not second-guess the Government's determination that a recipient country is not likely to torture a detainee.*

Petitioner's request for relief implicitly objects to Respondents' use of country-

wide assurances in the third country removal process and insists instead that Petitioner be provided with an individualized assessment before he may be removed to any third country. *See* Pet. at 19 (requiring an individualized assessment for "any country other than Rwanda"). But as the Supreme Court has made clear, the "Judiciary is not suited to second-guess such determinations," in either substance or scope, given their "foreign policy" ramifications. *Munaf v. Geren*, 553 U.S. 674, 702 (2008). And when the Executive determines a country will not torture a person on his removal, that is conclusive. *Id.* at 702-03. Indeed, "[u]nder *Munaf* . . . the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee." *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009), *cert. denied*, 559 U.S. 1005 (2010).

The "*Munaf* decision applies here a fortiori: That case involved transfer of American citizens, whereas this case involves transfer of alien detainees with no constitutional or statutory right to enter the United States." *Id.* at 517-18 (Kavanaugh, J., concurring). When the Executive decides an alien will not be tortured abroad, courts may not "second-guess [that] assessment," at least unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citation omitted); *see Munaf*, 553 U.S. at 703 n.6.

ii. *The March Guidance satisfies the minimum requirements of due process.*

In any event, Petitioner's challenge to the adequacy of the procedures afforded by the March Guidance is meritless. The government's procedures for implementing withholding and CAT protection in this context are fully consistent with due process.

Under the traditional *Mathews v. Eldridge* test for procedural due process,

where a liberty or property interest is implicated, the Court balances three factors:

> the interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different procedural safeguards, and the interest of the government in using the current procedures rather than additional or different procedures.

Mathews v. Eldridge, 424 U.S. 319, 334-35 (1976); *see Hamdi v. Rumsfeld*, 342 U.S. 56, 529-30 (2004) (plurality). In performing this analysis, however, the Court must bear in mind that "[t]he role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause and does not extend to imposing procedures that merely displace congressional choices of policy." *Landon*, 459 U.S. at 34-35. "[I]t would be improper simply to impose deportation procedures here because the reviewing court may find them preferable." *Id.* at 35. Courts must take care to only order what "would satisfy the minimum requirements of due process" under the particular circumstances. *Id.* (emphasis added). This is particularly true given the "weighty" interest the government has in "efficient administration of the immigration laws" and that "control over matters of immigration is a sovereign prerogative, largely within the control of the Executive and the Legislature." *Id.* at 34.

The combination of the March Guidance and the procedures Petitioner received in his prior immigration proceedings substantially eliminate the risk of an erroneous deprivation regarding potential fear of persecution or torture and undermines Petitioner's interest in additional procedures. Petitioner has a final order of removal, which means he received the panoply of procedural safeguards and protections available to him in his prior immigration proceedings, including the opportunity to raise withholding of removal and CAT claims and voice fears as to any potential countries of

removal. Moreover, he can move to reopen those past proceedings at any time as new fears arise. 8 C.F.R §§ 1003.2(c), 1003.23(b).

Moreover, pursuant to the March Guidance, Respondents provide Petitioner with additional process before he is removed to a third country. An alien may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* at 2. If the State Department finds that country's assurances credible, "the alien may be removed without the need for further procedures." *Id.* For aliens being removed to a third country not covered by an adequate assurance, the March Guidance states that DHS will first inform the alien of removal to that country. March Guidance at 2. If the alien affirmatively states a fear of removal to that country, USCIS will generally screen the alien within 24 hours of referral from the immigration officer to determine whether he "would more likely than not" be persecuted or tortured if sent to that country. *Id.* If not, the alien will be removed; if so, the alien will be referred to the immigration court—or, if appropriate, the government "may choose to designate another country for removal." *Id.*

Accordingly, the March Guidance ensures that Petitioner will either be sent to a country where the United States has received adequate diplomatic assurances he will not be persecuted or tortured, or that he will be given notice and an opportunity to be heard regarding any fear as to his country of removal. *Id.* And these procedures are provided on top of the procedures provided to him in his underlying immigration proceedings, as well as the ability to move to reopen his prior case. Taken together, these procedures significantly reduce the risk of erroneous deprivation and reduce Petitioner's interest in additional procedures.

The risk of erroneous deprivation here—being *entitled* to withholding of removal

or CAT protection to a third country but being *unable* to seek that protection—is further undermined by the high bar that Petitioner must meet in order to prevail on his potential fear claims. CAT protection is an extraordinary remedy reserved for the "extreme" scenario when an alien faces a specific threat of severe pain or suffering intentionally inflicted by the hand or with the concurrence of a government official in the receiving country. *Settenda v. Ashcroft*, 377 F.3d 89, 94 (1st Cir. 2004); *see also* 8 C.F.R. § 1208.18(a). Likewise, withholding of removal is reserved for circumstances where an alien faces a clear, objective probability of persecution in the receiving country. *Ang v. Gonzales*, 430 F.3d 50, 58 (1st Cir. 2005). And "persecution" in this context requires proof of "a certain level of serious harm (whether past or anticipated), a sufficient nexus between that harm and government action or inaction, and a causal connection to" the alien's race, religion, nationality, or membership in a particular social group." *Martínez-Pérez v. Sessions*, 897 F.3d 33, 39 (1st Cir. 2018). These forms of protection do not extend to whenever an alien is removed to a country with which the alien is unfamiliar, or to a country with a high crime rate, civil unrest, or other risk of private violence. *See, e.g., Ravindran v. I.N.S.*, 976 F.2d 754, 759 (1st Cir. 1992) ("[E]vidence of widespread violence and human rights violations affecting all citizens is insufficient to establish persecution."); *Paye v. Garland*, 109 F.4th 1, 10 (1st Cir. 2024) ("[A] fear of harm from general conditions of violence and civil unrest does not even establish a well-founded fear of persecution, the asylum standard, much less a clear probability of persecution, the withholding of removal standard."); *Rasiah v. Holder*, 589 F.3d 1, 5 (1st Cir. 2009) (evidence of "civil strife" not sufficient to establish persecution); *Vargas Panchi v. Garland*, 125 F.4th 298, 310 (1st Cir. 2025) (evidence of "widespread discrimination, poverty, and occasional violence" was not sufficient to

establish a fear of persecution); *Gomez-Abrego v. Garland*, 26 F.4th 39, 46 (1st Cir. 2022) (evidence of "widespread violence and police corruption" not sufficient to prevail on CAT claim); *Bazile v. Garland*, 76 F.4th 5, 16 (1st Cir. 2023) (evidence that "danger and violence are endemic" is insufficient for a grant of CAT protection). Given that demanding standard, it is far from unreasonable to expect that an alien with a bona fide withholding of removal or CAT claim will be able to identify well before any designation of a country by DHS the countries where he faces a genuine threat of persecution or torture—especially aliens like Petitioner, who has already gone through a removal process and would have been advised as to the scope of these forms of protection. Nor is it unreasonable to place the burden on the alien to proactively identify where he fears he may be persecuted or tortured.

Nevertheless, Petitioner insists that even more procedures must be required before he may be removed to a third country. But that assertion is inconsistent with established immigration law. The most analogous situation is in expedited-removal proceedings, where aliens are expected to raise fears of removal "almost immediately," and are often processed in a matter of hours. *See, e.g.*, 8 U.S.C. § 1225(b)(1)(B)(i). If the asylum officer determines the alien does not have a credible fear, any review by an immigration judge must be completed within seven days after that finding was made. 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R § 1003.42(e). The expedited-removal statute does not limit the countries to which an alien can be removed pursuant to Section 1231(b), *see* 8 U.S.C. § 1225(b), so its expedited procedures for raising and assessing fear claims apply even when an alien is removed somewhere other than the country he designates or his home country, *see, e.g.*, 8 U.S.C. § 1231(b)(2)(A)-(E).

It bears emphasizing that the risk of erroneous deprivation, in this context, is the

risk that an alien will be *entitled* to withholding of removal or CAT protection to a third country but will be *unable to seek* that relief. By any reasonable standard, the risk of such a deprivation under the current procedures is exceedingly low. As discussed above, Petitioner has already received considerable process and has had an opportunity to seek fear-based protection from removal in his prior immigration proceedings. He has also had the opportunity to seek to reopen those prior proceedings if new fears have arisen subsequently. And pursuant to the March Guidance, he receives additional procedures prior to removal to a third country. And, as discussed above, a lack of familiarity or nonspecific fear of the general living conditions in that country does not constitute a meritorious withholding of removal or CAT claim. Accordingly, the risk of erroneous deprivation is exceedingly low, Petitioner's interest in additional procedures is equally low, and he is therefore not entitled to any more process under *Mathews*.

IV. Conclusion

For the foregoing reasons, Petitioner is not entitled to a writ of habeas corpus. The Government respectfully submits that the court should dispose of and dismiss the matter with prejudice "as law and justice require." 28 U.S.C. § 2243. To the extent this matter is not disposed of by dismissal, the Government is prepared for and available to attend any hearing scheduled not more than five days after the filing of this return. *Id.*

Dated: December 4, 2025
Portland, Maine

Respectfully submitted,

ANDREW B. BENSON
United States Attorney

/s/ James D. Concannon
James D. Concannon
Assistant U.S. Attorney
100 Middle Street, 6th Floor
Portland, ME 04101
(207) 780-3257
James.Concannon@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2025, I caused the foregoing to be electronically filed with Clerk of Court using the CM/ECF system, which sent such notice to any individuals and entities who have entered appearances in this case to date, pursuant to the Court's ECF system.

ANDREW B. BENSON
United States Attorney

/s/ James D. Concannon
James D. Concannon
Assistant U.S. Attorney
100 Middle Street, 6th Floor
Portland, ME 04101
(207) 780-3257
James.Concannon@usdoj.gov