TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264

CHRISTIAN R. RUIZ
Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Christian.Ruiz@usdoj.gov

Attorneys for the Federal Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALEXANDER SUAREZ-RAMIREZ,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary, United States Department of Homeland Security; MICHAEL BERNACKE, Field Director, Salt Lake City Office; TODD LYONS, Acting Director; REGGIE RADER, Henderson Chief of Police,

Respondents.

Case No. 2:25-cv-02369-MMD-EJY

Federal Respondents' Response to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241

I. INTRODUCTION

Petitioner Alexander Suarez-Ramirez ("Petitioner" or "Suarez-Ramirez") is detained pursuant to a final order of removal under 8 U.S.C. § 1231(a). His Petition for Writ of Habeas Corpus should be denied because it fails to establish that his detention violates the Constitution or laws of the United States.

Petitioner alleges that he fears removal to Mexico and argues that the Department of Homeland Security's ("DHS") intention to remove him to a third country renders his continued detention unlawful. Even assuming, for purposes of this Response, that Petitioner's allegations are sufficient to trigger administrative fear screening under DHS policy, those allegations do not invalidate his final order of removal, do not bar continued

detention under § 1231, and do not establish that removal is not reasonably foreseeable under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner's claims improperly seek judicial intervention into the removal process itself. Habeas corpus does not provide a vehicle for supervising DHS's discretionary removal decisions or for imposing pre-removal procedures beyond those required by statute and existing policy. Accordingly, the Petition should be denied.

II. Factual Background

Undersigned counsel hereby relies as much as possible on the limited materials that Federal Respondents made available to him but otherwise relies on the facts alleged in the Petition (ECF No. 2).

Petitioner is a citizen of Cuba by virtue of birth. Exhibit A, at 1–2. On January 15, 2024, United States Border Patrol arrested Petitioner and issued a Notice to Appear, charging him with being an inadmissible alien under the Immigration and Naturalization Act and alleging that he arrived in the United States at or near El Paso, Texas. Exhibit B, at 1. The Notice to Appear ordered him to appear on July 17, 2025, before an immigration judge.

On May 11, 2025, the Las Vegas Metropolitan Police Department arrested Petitioner for driving under the influence. Exhibit A, at 2. Consequently, on May 13, 2025, ERO arrested Petitioner at the Clark County Detention Center. *Id.* Upon questioning, Petitioner stated that he has no claim to U.S. citizenship or U.S. lawful permanent residency status. *Id.* He also stated that he is afraid of persecution or torture if removed to Cuba, and DHS has no record that Petitioner expressed fear of removal to any country other than Cuba. *See e.g.*, *id.* at 3.

Federal Respondents do not dispute Petitioner's allegation that he was "ordered removed on July 14, 2025." *See* ECF No. 2, at 3. Federal Respondents also do not dispute Petitioner's allegation that he was granted withholding of removal to Cuba and subsequently ordered removed again on August 22, 2025. *Id.* at 2.

On August 31, 2025, the United States Immigration and Customs Enforcement served Petitioner with written notice informing him that DHS intends to remove him to Mexico. Exhibit C. Even though the written notice was read to Petitioner in Spanish–Petitioner's native language—Petitioner refused to sign the certificate of service. *Id.* But the refusal to acknowledge receipt does not negate that petitioner received proper service. *See id.* The pertinent portions of Exhibit C have been reproduced below:

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

Alien Name (Nombre del extranjero): Suarez-Ramirez, Alexander

Alien Number (A #) (Numero de extranjero): 241 468 800

Date (Fecha): 31 de Agosto del 2025

AVISO DE DEPORTACIÓN

Esta carta le informa que Inmigración y Control de Aduanas de los Estados Unidos tiene la intención de deportarlo a México.

CERTIFICATE OF SERVICE

I certify that, on today's date, the contents of this notice were read to Spanish in the _____ language, and I served the alien a copy of this notice in person.

Refused
Signature of Alien

AUG 3 1 2025
Date of Service

Title and Signature of ICE Official

1100
Time of Service

Name or Number of Interpreter (if applicable)

Upon information and belief, DHS has designated both Mexico and Spain as alternate countries of removal. Further, upon information and belief, a search that was

conducted through the records available to DHS, there is no evidence or notes indicating Petitioner claimed fear of removal to a third country.

III. Relevant Legal and Procedural Background

A. Withholding of Removal and Third Country Removals

An alien "may not [be] remove[d] [] to a country if" the alien can demonstrate that he has a well-founded fear of persecution if he is returned to such country. 8 U.S.C. § 1231(b)(3)(A). "The burden of proof is on the applicant . . . to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Any alien who has been (1) ordered removed, and (2) found to be entitled to protection under the Convention Against Torture ("CAT") "shall be granted deferral of removal to the country where he or she is more likely than not to be tortured." *Id.* § 1208.17(a). Such CAT relief does *not* "alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject to detention." *Id.* § 1208.17(c).

Similarly, when an Immigration Judge ("IJ") grants withholding of removal, the IJ issues a removal order and withholds that order with respect to the country or countries designated in the removal order. *Johnson v. Guzman Chavez*, 594 U.S. 523, 524 (2021).

If an alien is granted withholding of removal or relief under the Convention against Torture, he or she still may be removed to a country where the "government [] will accept the alien into the country's territory." *Id.* § 1231(b)(1)(C). The decision to remove such alien to another country other than his native-born country is within the discretion of the Secretary of DHS. *See* 8 C.F.R. § 241.15. An alien "may not [be] remove[d] [] to a country if" the alien can demonstrate that he has a well-founded fear of persecution if he is returned to such country. 8 U.S.C. § 1231(b)(3)(A).

B. *D.V.D.* Litigation

In March 2025, three plaintiffs instituted *D.V.D. v. U.S. Department of Homeland Security*, No. 25-cv-10676 (BEM) in the District of Massachusetts, a putative class action suit challenging their third country removals. On March 28, 2025, that Court entered a

Temporary Restraining Order (ECF No. 34) enjoining the Department of Homeland Security ("DHS") and others from "[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings" unless certain conditions are met. On April 18, 2025, the Court in *D.V.D.* issued an order (ECF No. 64) granting the Plaintiff's motion for class certification (ECF No. 4) and motion for preliminary injunction (ECF. No. 6). That Order certified a non-opt out class and established certain procedures that DHS must follow before removing an alien with a final order of removal to a third country, which were, until recently, national in effect. Specifically, the class is defined as:

> All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who 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.

Order at 23, *D.V.D.* (ECF No. 64).

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts's preliminary injunction pending appeal in the United States Court of Appeals for the First Circuit. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). That same day, the District Court of Massachusetts ordered that its remedial order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (ECF No. 176). Defendants moved to clarify the Supreme Court's Order and, on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay.

III. Argument

A. Petitioner's Continued Detention Is Lawful

a. Removal and Detention Under 8 U.S.C. § 1231

Regardless of which provision governs a non-citizen's detention during immigration proceedings, once a non-citizen is subject to an administratively final removal order,

detention authority shifts to 8 U.S.C. § 1231(a). *See Wang v. Ashcroft*, 320 F.3d 130, 145 (2d Cir. 2003) ("INA § 241, 8 U.S.C. § 1231, governs the detention of non-citizens subject to final orders of removal."). "An order of removal is 'final' upon the earlier of the BIA's affirmance of the immigration judge's order of removal or the expiration of the time to appeal the immigration judge's order of removal to the BIA." *Chupina v. Holder*, 570 F.3d 99, 103 (2d Cir. 2009) (citing 8 U.S.C. § 1101(a)(47)(B)).

Section 1231 provides that non-citizens with final removal orders must be detained without a bond hearing during a 90-day "removal period." *See* 8 U.S.C. § 1231(a)(2). The removal period begins on the latest of:

> (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.

8 U.S.C. § 1231(a)(1)(B). The authority to detain aliens under section 1231 was addressed by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001). There, the Court held that 8 U.S.C. § 1231(a) authorizes immigration detention after entry of an administratively final order of removal for a period reasonably necessary" to accomplish the noncitizen's removal from the United States. *Zadvydas*, 533 U.S. at 699-700. The Supreme Court recognized six months as a presumptively reasonable period of time to allow the government to accomplish an alien's removal. *Id.* at 701. To prevent "indefinite" detention, the *Zadvydas* Court held that *after* the six-month period has elapsed, a noncitizen may seek his release by demonstrating that his removal is not likely to occur in the reasonably foreseeable future. *Id.* at 699-70. This six-month presumption, however, does not mean that every noncitizen not removed must be released after six months. To the contrary, a noncitizen may be detained until it has been determined that there is "no significant likelihood of removal in the reasonably foreseeable future." *Id.* Importantly, the *Zadvydas* Court placed the burden of proof on the noncitizen seeking release to demonstrate, after the six month period, good reason to believe that there is no

significant likelihood of removal in the reasonably foreseeable future. *Id.* Only if the noncitizen sufficiently supports such a finding, must the government "respond with evidence sufficient to rebut that showing." *Id.*

Here the Petition explains that Petitioner was ordered removed on July 14, 2025, and August 22, 2025, and was also granted relief in the form of withholding of removal. ECF No. 2, at 3. As explained above, when an IJ grants withholding of removal, the IJ issues a removal order and withholds that order with respect to the country or countries designated in the removal order. *Johnson v. Guzman Chavez*, 594 U.S. 523, 524 (2021). Here, that means that while the IJ ordered Petitioner removed to Cuba, his removal to Cuba was withheld as to Cuba specifically. *See* ECF No. 2, at 3, 5.

The expiration of the time to appeal the IJ's order of removal to the Board of Immigration Appeals has passed in this case, as it has been more than 30 days since August 22, 2025—the date Petitioner was ordered removed. Petitioner's order of removal has thus become final, and Petitioner's detention therefore falls within the statutory framework governing post-final-order detention under 8 U.S.C. § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 531–33 (2021).

Under *Zadvydas*, detention during the presumptively reasonable six-month period following a final order of removal is constitutional. 533 U.S. at 701. Even assuming the six-month presumptive period has lapsed, Petitioner bears the initial burden of providing good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. But Petitioner here has failed to meet that burden. As an initial matter, the Petition itself reflects that Petitioner has been removed to Mexico prior to May 2025: "Undersigned counsel understands that Mr. Suarez-Ramirez explained to ICE agents that before his May 2025 detention, [he] was removed to Mexico." ECF No. 2, at 5. There is nothing in the record that indicates that DHS is incapable of removing Petitioner once more; in fact, Petitioner's prior removal bolster the argument that DHS is fully capable of effectuating a third country removal of Petitioner on a timely basis.

Also, upon information and belief, DHS has identified Mexico and Spain as potential countries for removal and has properly served Petitioner with a notice of intended removal. *See* Exhibit C. DHS previously represented that, if removal were authorized when Petitioner was detained in Arizona, it possessed the operational ability to execute removal within a few days. Although Petitioner is currently being transferred to Nevada, that logistical change does not negate that removal was reasonably foreseeable at the relevant time. DHS's operational readiness demonstrates that Petitioner's removal was and continues to be likely if authorized. DHS has complied, and continues to comply, with the Court's order enjoining removal, and no removal will occur unless and until lawful authorization exists.

The possibility that DHS may undertake administrative steps to comply with internal guidance regarding third country removals, such as fear screening pursuant to DHS guidance, does not render removal not reasonably foreseeable within the meaning of *Zadvydas*.

B. There Is a Significant Likelihood of Removal to a Third Country in the Reasonably Foreseeable Future

Petitioner's *Zadvydas* claim fails because Petitioner has not met his initial burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. In *Zadvydas*, the Supreme Court cautioned that even a detention beyond the six-month period "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." 533 U.S at 701. The Supreme Court's interpretation of 8 U.S.C. § 1231(a)(6) in Zadvydas aims to protect against the indefinite detention of aliens who the government is unable to remove—those in "removable-but-unremovable limbo." *Jama v. ICE*, 543 U.S. 335, 347 (2005). That is not this case.

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a. Petitioner Has Not Met His Initial Burden of Demonstrating Good Reason to Believe There is No Significant Likelihood of Removal in the Reasonably Foreseeable Future

The Supreme Court has held that, after the six-month period—which, in this case, has not yet elapsed—the alien bears the initial burden to demonstrate "good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701.; *see Barenboy v. Atty. Gen.*, 150 F. App'x 258, 261 n.2 (3d Cir. 2005) ("Once the six-month period has passed, the burden is on the alien to provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." (quotation omitted)). Here, Petitioner has failed to carry this initial burden.

Petitioner appears to have advanced the following rationale to support the notion that his removal is not reasonably foreseeable: "As of the filing date of [the] Petition, months and 12 days have passed since Petitioner was ordered removed to Cuba but granted withholding of removal." *See* ECF No. 2. The Petition further avers that "[h]e cannot be removed to Cuba, and Respondents' attempts to remove him to Cuba are unlawful, so the Constitution and the holding of *Zadvydas* compel his immediate release." *Id.*

But these assertions ignore the fact that Petitioner's removal to Mexico or another third country, is likely, as explained above and as supported by DHS's efforts to effectuate Petitioner's removal.

The absence of an exact date of Petitioner's removal does not undermine the conclusion that there is still a significant likelihood of removal in the reasonably foreseeable future, especially when DHS has previously indicated that they stood operationally ready to effectuate removal of Petitioner within just a few days. Courts have emphasized that the absence of specific date of removal does not satisfy that burden. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008) (holding detention was permissible where removal remains "practically attainable" even if detention lacked a certain end date and was not imminent).

b. There is a Significant Likelihood of Removal to a Third Country in the Reasonably Foreseeable Future

Only if an alien makes the initial showing must the government "respond with evidence sufficient to rebut that showing." *Zadvydas*, 533 U.S. at 701; *see also Soberanes v. Comfort*, 388 F.3d 1305, 1310-11 (10th Cir. 2004) (stating "onus is on the alien to provide [] good reason to believe that there is no [such] likelihood' before 'the Government must respond with evidence sufficient to rebut that shown.' (internal citation omitted)). Here, even if the Court were to conclude Petitioner met his burden, Respondents have rebutted that showing because the evidence establishes that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future.

The Supreme Court has stressed that the reasonably-foreseeable inquiry requires taking "appropriate account of the greater immigration-related expertise of the Executive Branch, of the serious administrative needs and concerns inherent in the necessarily extensive [ICE] efforts to enforce this complex statute, and the Nation's need to speak with one voice in immigration matters." *Zadvydas*, 533 U.S. at 700. In addition, courts must "recognize Executive Branch primacy in foreign policy matters," and "grant the Government appropriate leeway when its judgments rest upon foreign policy expertise." *Id.* Taking these considerations into account, the Court adopted a six-month presumptively reasonable period "to limit the occasions when courts will need to make" the type of "difficult judgments" inherent in reviewing this area of "primary Executive branch responsibility." *Id.* at 700-01.

In this case, where the government is authorized to detain Petitioner for the "period reasonably necessary to bring about [his] removal from the United States," *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022) (cleaned up), and ICE is operationally ready to effectuate Petitioner's third-country removal, it would be incorrect to conclude that Petitioner's detention exceeds the time reasonably necessary to secure his removal or that there is no significant likelihood of Petitioner's removal in the reasonably foreseeable future.

C. Any Due Process Claim Regarding Third Country Removal Fails

Petitioner's claim that DHS's policy to remove aliens to a third country violates the due-process principles and constitutes arbitrary and capricious agency action should be denied. Petitioner argues that he has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS deports him to a third country. ECF No. 2, at 20; *see also* ECF No. 8, at 8. Petitioner argues that under due process, he is entitled to additional procedural requirements beyond those set forth within DHS's own guidance. *Id.* However, Petitioner's claims fail because the relief requested here is substantially the same relief requested in *D.V.D.*—a certified non-opt class action currently pending in the District of Massachusetts. The Supreme Court's stay of the *D.V.D.* preliminary injunction while maintaining the class certification supports Respondents' argument.

As explained above, the District of Massachusetts entered a preliminary injunction prescribing the process to which *D.V.D.* class members were entitled before removal to a third country and certified a non-opt out class of which Petitioner is undisputedly a member. The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims and the Government would ultimately prevail.

First, this Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, the Petition challenges how Respondents should implement Petitioner's third country removal. ECF No. 2, at 19–21; *see also e.g.*, ECF No. 8, at 8–9. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection

of the relief initially temporarily provided to class members by the District of Massachusetts.

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Defendants are likely to succeed on the legal arguments presented in response to the instant habeas petition. Allowing Petitioner's habeas petition to proceed on the ground that ICE allegedly failed or will fail to follow the proper procedures in executing a removal to a third country would therefore be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* and allow DHS to proceed with several third country removals under its internal guidance for third country removals. As a result, this Court should not require Respondents to provide the degree of process described in either the *D.V.D.* preliminary injunction or in the Petition or Motion for Temporary Restrainin Order in this case, before removing Petitioner to a third country. The Supreme Court will, by all indications, eventually hold that such process is not required under the law.

Although Petitioner alleges in his Petition that he fears removal to Mexico, the Federal Respondents hereby submit that DHS remains committed to following the due process procedures outlined in its own guidance on third country removals. *See e.g.*, Exhibit D. DHS's Guidance Regarding Third Country Removals dated March 30, 2025, governs notice, fear screening, and referral procedures when DHS seeks to remove a noncitizen to a country not previously designated in immigration proceedings. *Id.* Under that guidance, when an individual affirmatively states a fear of removal, DHS refers the matter to U.S.

Citizenship and Immigration Services for screening for protection under INA § 241(b)(3) and the Convention Against Torture. Those procedures operate within the removal process and do not invalidate a final order of removal or bar detention under § 1231. This guarantees sufficient due process for Petitioner, as the Supreme Court's decision to stay the *D.V.D.* injunction inherently supports.

One of Petitioner's central theories is that his alleged fear of removal to Mexico bars continued detention or entitles him to judicially imposed pre-removal procedures. But even assuming that Petitioner's allegations were sufficient to trigger administrative screening under DHS policy, fear-based objections to a proposed country of removal are procedural in nature. At most, they require DHS to follow its internal screening and referral procedures, and they neither invalidate a final order of removal, nor bar detention under § 1231, nor entitle a petitioner to release through habeas corpus.

IV. CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted this 17th day of December 2025.

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney

/s/ Christian R. Ruiz
CHRISTIAN R. RUIZ
Assistant United States Attorneys