

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

ANTONIO OCHOA BANEGA,

Petitioner,

v.

WARDEN OF SOFT SIDE
SOUTH FACILITY, ET AL.,

Respondents.

Case No. 2:25-cv-01152-JES-DNF

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner Antonio Ochoa Banega ("Petitioner") seeks the grant of a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his detention by Immigration and Customs Enforcement ("ICE") and seeking his immediate release from custody. Petitioner also brings challenges pursuant to the Accardi Doctrine, regulation, statute, and the Fifth Amendment to the United States Constitution. His petition must be denied.

BACKGROUND

Petitioner is a citizen of Cuba. *See* ECF No. 1, Petitioner for Habeas Corpus ("Petition"), ¶ 14; ECF No. 9, Amended Petition for Habeas Corpus ("Am. Pet."), ¶ 17. He was paroled into the United States on June 22, 1980, however his parole was revoked on April 1, 1992. Am. Pet. ¶ 28; ECF No. 9-2. Petitioner was placed into

deportation proceedings and ordered excluded and deported from the United States on April 23, 1992 following a string of serious criminal offenses. Petition, ¶ 21; Am. Pet., ¶ 28; ECF No.9-3; *see also* Record of Deportable/Inadmissible Alien (“Exhibit A”). Following the entry of this order, Petitioner was released on an order of supervision. Petition, ¶ 22; Am. Pet., ¶ 29. On November 1, 2025, Respondent U.S. Immigration and Customs Enforcement (“ICE”) revoked Petitioner’s order of supervision and detained him for the purpose of executing his longstanding final deportation order. Petition, ¶ 14; Am. Pet., ¶ 17; Notice of Revocation of Release dated November 1, 2025 (“Exhibit B”).

On December 11, 2025, Petitioner—and two additional unrelated individuals—filed a petition seeking habeas corpus relief with this Court. *See* Petition. The Court ordered Respondents to respond to the petition, however shortly before response was due, Petitioner filed an amended habeas petition adding additional unrelated petitioners and new claims related to detention authority and the conditions of confinement. *See* Am. Pet. Respondents sought additional time to respond to the Amended Petition and on December 29, 2025, the Court dismissed all petitioners except for Petitioner Ochoa Banega and granted Respondents until January 14, 2026 to respond to the Amended Petition. ECF Nos. 11, 12. Petitioner then filed an emergency motion seeking a stay of removal. ECF No. 16. Respondents submitted a timely opposition to the stay motion. ECF No. 19. Still before the Court is Petitioner’s Amended Petition. In response to this Court’s order, ECF No. 12, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.

LEGAL STANDARD

The Court has the power to grant a writ of habeas corpus where a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *Walker v. Johnston*, 312 U.S. 275, 286 (1941). “The burden rests on the person in custody to prove his detention is unlawful.” *Benito Vasquez v. Moniz*, No. 25-11737-NMG, 2025 WL 1737216, at *1 (D. Mass. June 23, 2025).

ARGUMENT

I. Respondents Bondi, Lyons, Noem, and Ripa Are Improperly Named.

The only appropriate respondent to a habeas case is the official with physical custody of petitioner. 28 U.S.C. § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained.”); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) (“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.”). Accordingly, all Respondents with the exception of the Warden of Alligator Alcatraz, are improper parties to this action and should be dismissed.

II. The Immigration and Nationality Act Precludes Review of Petitioner’s Claims

A. 8 U.S.C. § 1252(g) is triggered because Petitioner is being detained for the purpose of executing his final order of removal.

Respondents acknowledge that this Court’s prior rulings concerning jurisdiction pursuant to 8 U.S.C. § 1252(b)(9) in similar cases would control the result in this case should the Court adhere to its legal reasoning in those prior decisions and

find the facts sufficiently common. *See e.g., Cetino v. Hardin, et al.*, No. 2:25-cv-1037-JES-DNF, 2025 WL 3558138 (M.D. Fla. Dec. 12, 2025) (challenging whether the statutory authority the government utilized in making a custody determination was proper). While Respondents respectfully disagree, in the interest of judicial economy, and to expedite the Court’s consideration of this matter, Respondents hereby rely upon and incorporate by reference the legal arguments regarding jurisdiction under Sections 1252(b)(9) as presented in *Cetino*.¹ *See Cetino*, No. 2:25-cv-830-JES-DNF, ECF No. 9. Should the Court prefer to receive a more exhaustive and fulsome opposition brief on these issues, Respondents respectfully request leave to file such a brief and will do so upon the Court’s request.

B. 8 U.S.C. § 1252(b)(9) is triggered because Petitioner challenges his order.

The Court also lacks jurisdiction on separate grounds. The INA precludes the Court’s review of “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” except when brought pursuant to judicial review of a final order of removal. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause” and applies where a petitioner seeks “review of an order of removal [or] the decision to seek removal.” *Canal A v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020); *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up). In reading this subsection alongside 8 U.S.C. § 1252(a)(5)—the subsection that provides

¹ Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of judicial economy, Respondents respectfully request the Court to suspend application of the rule. *See* Local Rule 1.01(a) and 1.01(b).

the single, proper path for judicial review of removal orders—courts have concluded that petitioners must funnel all aspects of challenges to removal proceedings through the avenue set forth in Section 1252(a)(5), which takes place after a final order of removal has issued. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (“The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhomie v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).”). The zipper clause’s restrictions are broad, but not without limitation. *See, e.g., Canal A*, 964 F.3d at 1257. However, a claim that arises from actions or proceedings brought to remove an alien clearly falls within its parameters. *See Regents of Cal.*, 591 U.S. at 19 (finding the bar inapplicable where parties did not challenge removal proceedings).

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293-94. The Court found that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were] not challenging the decision to detain them in the first place.” *Id.* at 294-95.

Respondents again recognize that the Court has rejected the applicability of 8 U.S.C. § 1252(b)(9)’s jurisdictional bar in other cases challenging the authority on which to detain an individual, however there are distinctions present here that counsel reaching a different outcome. Here, Petitioner indeed challenges the removal order

issued against him, suggesting that the very order on which Respondents rely is unlawful. *See* Petition, ¶ 21; Am. Pet., ¶ 28.² While the fact that the Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because “detention *is* an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. at 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9), the fact that he also attacks the sufficiency of that order places his claims within 8 U.S.C. § 1252(b)(9)’s jurisdictional bar. The Court should dismiss the Petitioner’s claims for lack of jurisdiction under 8 U.S.C. § 1252(b)(9).

III. Petitioner’s Detention is Lawful

A. The INA mandates Petitioner’s detention.

Should the Court determine that it retains jurisdiction over Petitioner’s habeas claims—and it should not—he still cannot establish eligibility for habeas relief because his detention is lawful. An alien with a final order of removal is subject to the detention and removal standards set forth at 8 U.S.C. § 1231. The statute directs that an alien ordered removed be removed within 90 days of his order becoming final and that he remain detained during that timeframe. 8 U.S.C. § 1231 (a)(1)(A), (a)(2)(A). If the government is unable to remove an individual during that statutory period, the INA empowers ICE to release him on an order of supervision. 8 U.S.C. § 1231(a)(3). Importantly, an order of supervision is not indefinite, rather the regulations permit the

² Petitioner also challenges the government’s failure to reopen removal proceedings and obtain a new order of removal with a third country designation which is another direct attack to his existing deportation order. *See* Am. Pet., ¶ 106.

government to revoke the order for a variety of reasons, among them because the purposes of the release have been served and it is appropriate to enforce a removal order. *See* 8 C.F.R. § 241.4(l)(2).

When removal is not effectuated within the 90-day statutory period, the government is still permitted to continue to detain an alien—or to detain him again in the future for the purpose of executing the order—and there is no statutory limit on how long that post-removal detention period may last. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). The U.S. Supreme Court has nevertheless interpreted the post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas*, 533 U.S. at 689.

Here, Petitioner was ordered excluded in 1992 and he remains subject to a final, executable removal order today. *See* Petition, ¶ 21; Am. Pet., ¶ 28; ECF No.9-3. While he was initially released on an order of supervision—*see* Petition, ¶ 22; Am. Pet., ¶ 29—the government recently determined that it is appropriate to move forward with executing his order once more and Petitioner has been detained for that purpose. *See* Exhibit B. Petitioner, an alien subject to a final order of removal, has thus been properly detained pursuant to 8 U.S.C. § 1231.

B. Revocation of Petitioner’s Order of Supervision Followed the Regulations.

Petitioner argues that Respondents have violated three different detention regulations: 8 C.F.R. §§ 241.4, 241.13, and 212.12. Am. Pet., ¶¶ 94-97. Petitioner is wrong. On November 1, 2025, ICE lawfully exercised its discretion to revoke Petitioner’s supervision under 8 C.F.R. §§ 241.4(l) and 241.13 for the purpose of

executing his final order of removal. Exhibit B. Petitioner argues that he was not afforded notice of the reasons underlying ICE's decision to revoke his order of supervision nor provided the opportunity to respond, *see* Am. Pet, ¶ 96, but the record and a simple reading of the regulations belie his argument. First, notice of the revocation of his order of supervision was indeed provided to Petitioner as was the basis for which his supervision was revoked. *See* Exhibit B. Second, the discretionary revocation of an alien's order of supervision under 8 C.F.R. § 241.4(l)(2)—the subsection of the regulation government revocation of release for the purpose of enforcing a removal order—does not require that the individual be afforded an interview or opportunity to respond to the agency's revocation. *Compare* 8 C.F.R. § 241.4(l)(1) (“The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification”) *with* 8 C.F.R. § 241.4(l)(2) (no such language); *see also* *Barrios v. Ripa*, No. 1:25-CV-22644, 2025 WL 2280485, at *6 (S.D. Fla. Aug. 8, 2025) (finding no entitlement to notice or informal review where the order of supervision was being revoked under 8 C.F.R. § 241.4(l)(2)).

In addition, Petitioner has not presented any evidence that he requested a finding as to the significant likelihood of his removal in the reasonably foreseeable future by the Headquarters Post-Order Detention Unit (“HQPDU”). After the February 2001 *Zadvydas* decision issued, 8 C.F.R. § 241.13 was promulgated to govern administrative review of alien detention determinations made beyond the removal period. *See* 8 C.F.R. § 241.13 (enacted in November 2001); *see also* *Zadvydas*, 533 U.S.

678. Under this regulatory scheme, an alien who believes his detention falls within its parameters may submit a request for release to the HQPDU stating the basis for which he believes there is no significant likelihood of his removal in the reasonably foreseeable future. *See* 8 C.F.R. § 241.13(c) (“The HQPDU shall conduct a review under this section, *in response to a request from a detained alien*, in order to determine whether there is no significant likelihood that the alien will be removed in the reasonably foreseeable future) (emphasis added); *see also* 8 C.F.R. § 241.13(d)(1). A written request must include sufficient information to establish his compliance with his obligation to cooperate in the process of obtaining necessary travel documents necessary to effect removal. 8 C.F.R. § 241.13(d)(2). The HQPDU must respond to the alien’s request in writing to acknowledge receipt of the request for a review of his continued detention, and immigration officials may continue to detain the alien until the HQPDU has made a determination as to whether there is a significant likelihood that the alien can be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(e)(1).

Critically, Petitioner has made no showing here that such a request has been made to the HQPDU nor that a decision has issued as a result of any such request. *See* 8 C.F.R. § 241.13(c) (indicating that HQPDU must conduct a review *upon an alien’s request*). Even to the extent that Respondents are considered to have commenced 8 C.F.R. § 241.13’s review process, Petitioner’s claims fail because he cannot demonstrate that he has exhausted 8 C.F.R. § 241.13’s HQPDU review process before running to this Court for habeas intervention. *See Abdelghani v. Lynch*, No. 3:16-CV-

1594-J-39JRK, 2017 WL 11696739, at *2 (M.D. Fla. Jan. 3, 2017) (dismissing habeas petition as premature where petitioner had not yet received a decision from HQPDU concerning his significant likelihood of removal in the reasonably foreseeable future); *see also Royer v. Holder*, No. 3:12-CV-1319-J-12MCR, 2012 WL 6553114, at *3 (M.D. Fla. Dec. 14, 2012) (same).

Petitioner also suggests that the government has failed to abide by the regulations set forth at 8 C.F.R. § 212.12, created for the purpose of establishing procedures of immigration detention of Cubans who came to the United States in 1980 as part of the Mariel boatlift. Am. Pet., ¶¶ 135-42. This regulation grants the government extraordinarily broad discretion to revoke parole which is appropriate where—as here—the government has opted to re-detain Petitioner for the purpose of executing his removal order. *See* Exhibit B. Petitioner has not shown that the timing of the review of his detention decision violates 8 C.F.R. § 212.12 in any way. In fact, the regulation establishes no firm deadline but rather grants the government leeway in scheduling and completing review. *See* 8 C.F.R. § 212.12(g)(1) (“The review process will commence with a scheduling of a file review, which will ordinarily be expected to occur within approximately three months after parole is revoked.”). Even if Respondents had deviated from the regulatory requirement—and it did not—deviation in and of itself does not amount to a due process violation.

Petitioner relies on *United States ex rel. Accardi v. Shaughnessy*, known as the “*Accardi* doctrine,” which requires an agency to follow its regulations. *See* 347 U.S. 260 (1954). But the Supreme Court in *Accardi* did not sweepingly conclude that agencies

violate due process any time they fail to follow a regulation in a way that impacts an individual's rights. Rather, *Accardi* "enunciates[s] principles of federal administrative law rather than of constitutional law." *Bd. of Curators of Univ. of Missouri v. Horowitz*, 435 U.S. 78, 92 n.8 (1978). "*Accardi* is based on administrative law principles, not constitutional due process requirements." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 212 (D.D.C. 2020) (quoting *Vanover v. Hantman*, 77 F.2d 91, 103 (D.D.C. 1935), *aff'd*, 38 F. App'x 4 (D.C. Cir. 2002)) (explaining limits on the *Accardi* doctrine). Here, Petitioner has not shown that any arguable violation of the regulatory provisions amount to a due process violation, since he has not shown that he will be denied any notice and opportunity to be heard. Furthermore, Petitioner has shown no prejudice, as he must, in order to prevail on his due process claims. *See United States v. Valencia Vergara*, 264 F. App'x 832, 834 (11th Cir. 2008). Review of Petitioner's detention has followed applicable regulatory guidelines and he has shown no denial of that process.

Finally, the proper remedy for a procedural due process violation would be additional process, not release from detention. A procedural due process claim concerns the procedures that are required by the Constitution, not the substance of an individual's detention. Indeed, in *Accardi* itself, the Supreme Court did not order substantive relief but instead ordered the agency to afford the process provided in its regulations. *See Accardi*, 347 U.S. at 268 (ruling that if the petitioner were to succeed in proving the Board of Immigration Appeals' failure to comply with its regulations, "he should receive a new hearing before the Board"). Thus, even under *Accardi*,

Petitioner should at most be given only what the text of the regulation requires. Consistent with this reasoning, district courts have declined release of a detainee as a remedy to procedural regulatory violations. *See e.g., Douglas v. Baker*, No. 25-cv-2243-ABA, 2025 WL 2687354, at *6 (D. Md. Sept. 19, 2025); *Cruz Medina v. Noem*, 794 F. Supp. 3d 365, 382 (D. Md. Aug. 11, 2025); *Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018). This Court should do the same.

As the notice suggests, Petitioner's order of supervision was revoked consistent with the criteria set forth in 8 C.F.R. §§ 241.4 and 241.13. *See* Exhibit B ("Based on the above and pursuant to 8 C.F.R. § 241.4 / 8 C.F.R. § 241.13, you are to remain in ICE custody at this time."). To the extent that HQPDU review has been triggered, a final decision remains pending. And to the extent that 8 C.F.R. § 212.12 applies at all, Petitioner has demonstrated no regulatory violation.

C. Petitioner is lawfully detained under ICE authority.

Petitioner is lawfully detained at Florida Soft Side South, also known as Alligator Alcatraz. As declared by U.S. Immigration and Customs Enforcement in litigation also pending in this district, immigration detainees at the facility detained by the State of Florida pursuant to 8 U.S.C. § 1357(g):

Federal law authorizes state officers and employees to "perform a function of an immigration officer," including the "detention of aliens," pursuant to an agreement with the federal government. *See* 8 U.S.C. § 1357(g)(1). The aliens at Alligator Alcatraz are detained by the State of Florida pursuant to that authority. . . . State officers detaining aliens pursuant to this authority are also subject to the "direction and supervision of the" federal government. 8 U.S.C. § 1357(g)(3).

C.M. et al v. Noem et al., 2:25-cv-00747-SPC-DNF, Doc. 53 (M.D. Fla.) (Fed. Def.'s

Resp. to Pls' Expedited Disco. Req.)

In a recent order by Judge Dudek, the Court denied a plaintiffs' motion for a preliminary injunction seeking to prevent the State of Florida from holding immigration detainees at the facility. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008 (M.D. Fla. Dec. 18, 2025). The Court concluded plaintiff and the proposed the class were unable to show an irreparable injury absent an injunction, because "he (and the proposed class) is subject to confinement by the Attorney General. *M. A. v. Guthrie*, No. 2:25-CV-765-KCD-DNF, 2025 WL 3677008, at *2 (M.D. Fla. Dec. 18, 2025)." As recognized by *M.A.*, individuals at Alligator Alcatraz—including Petitioner—are subject to the Attorney General's detention regardless of whether they are located at that facility or another location. Petitioner's requested release from custody is therefore incongruous with the nature of his complaint.

D. Petitioner's challenges concerning third country removal cannot be resolved before this Court.

Petitioner contends that his detention for the purpose of removal is unlawful because his removal to Cuba is improbable and there is "no indication that any viable removal country has been identified" suggesting that third-country removal would run afoul of Fifth Amendment Due Process principles. Am. Pet., ¶ 97; *see also* Am. Pet. ¶¶ 85-87, 89, 98, 106. Petitioner misunderstands the law. The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. *See* 8 U.S.C.

§ 1231(b). This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b)(2); *see also Jama v. ICE*, 543 U.S. 335, 338-41 (2005). Such countries are referred to as “third countries” for removal. While the INA authorizes the removal of aliens who have received a final order of removal to a third country, *see* 8 U.S.C. § 1231(b)(1)(C), (2), it does not delineate a particular process for carrying out third country removals to ensure that they remain consistent with the United States’ obligations under the Convention Against Torture.³ Instead, Congress delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note (providing that the “heads of the appropriate agencies shall prescribe regulations to implement” the United States’ CAT obligations). In other words, Respondents need not demonstrate that Cuba is willing to issue travel documents to Petitioner or agree to his repatriation, rather third country removal is indeed available. Furthermore, the process for implementing third country removal has been delegated exclusively to the Executive Branch. Whether third country removal is pursued remains within the realm of duties allowable by statute and Petitioner has demonstrated no violation of statute or precedent to the contrary.

Furthermore, to the extent Petitioner argues that this case presents a violation of his Due Process right to challenge a specific third country removal effort—*see Am.*

³ The Convention Against Torture regulations prohibit an alien’s removal to a country where he faces a clear probability of torture—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by or with the consent of the public official. *See* 8 C.F.R. §§ 208.16(c), 208.18(a), 1208.16(c), 1208.18(a) (2020).

Compl., ¶ 106—Petitioner has not presented a justiciable issue before this Court. Believing that the government’s efforts to remove aliens with final orders of removal to third countries are unlawful, four aliens commenced a lawsuit in the District Court for the District of Massachusetts in March 2025 and sought class certification. *See D.V.D. et al., v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-10676 (D. Mass.), Dkt. 1. The *D.V.D.* plaintiffs challenge the government’s procedures for conducting third country removals under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 551, *et seq.*, the Fifth Amendment Due Process Clause, the Declaratory Judgment Act, 28 U.S.C. § 2201, and the INA. *Id.* ¶¶ 99-138. Their requested relief includes “declar[ing] and “set[ting] aside Defendants’ current policy of failing to provide Plaintiffs and class members with written notice and a meaningful opportunity to present a fear-based claim to an immigration judge prior to deportation to a third country.” *Id.* ¶¶ a-o. On April 18, 2025, the District of Massachusetts certified a Rule 23(b)(2) non-opt-out class and entered a nationwide preliminary injunction establishing certain procedures that DHS must follow before removing an alien with a final order of removal to a third country. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 365 (D. Mass. 2025). 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.

Id. at 378. On May 21, 2025, the *D.V.D.* court issued a memorandum order clarifying

that its preliminary injunction required the government to provide extra-statutory remedies including that all third-country removals be preceded by written notice to the alien and alien's counsel along with a meaningful opportunity to raise a fear-based claim for protection from removal. *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 1:25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025). The *D.V.D.* court stated that its order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.*

On June 23, 2025, the Supreme Court stayed the district court's preliminary injunction pending appeal, both as to the class and the named plaintiffs. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (Mem.) (2025). Nevertheless, that same day, the *D.V.D.* court ordered that its May 21, 2025 order remain in effect. *D.V.D. v. DHS*, No. 1:25-cv-10676, Dkt. 176, Electronic Order Entered (June 23, 2025). Accordingly, the government returned to the Supreme Court for clarification. On July 3, 2025, the Supreme Court granted the government's motion and clarified that the *D.V.D.* court's May 21, 2025 order is no longer in force. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629 (2025) ("Our June 23 order stayed the April 18 preliminary injunction in full. The May 21 remedial order cannot now be used to enforce an injunction that our stay rendered unenforceable."). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See D.V.D.*, 145 S. Ct. at 2629 (explaining that the Court's July 23, 2025 order "stayed the

preliminary injunction”).

Generally, parties are limited to one bite at the apple, a principle the Eleventh Circuit recognizes in its claim-splitting jurisprudence. *See Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 841 (11th Cir. 2017) (quoting *Katz v. Gerardi*, 655 F.3d 1212, 1217 (10th Cir. 2011) (“The rule against claim-splitting requires a plaintiff to assert all of its causes of action arising from a common set of facts in one lawsuit. By spreading claims around in multiple lawsuits in other courts or before other judges, parties waste ‘scarce judicial resources’ and undermine ‘the efficient and comprehensive disposition of cases.’”). To determine whether a claim has been improperly split, courts look at two factors: whether the same parties are involved and whether separate cases arise from the same transaction. *Vanover*, 857 F.3d at 841-42. Borrowing from *res judicata* principles, the Eleventh Circuit has determined that “[s]uccessive causes of action arise from the same transaction or series of transactions when the two actions are based on the same nucleus of operative facts” but importantly, the question is not whether judgment is final, but rather whether—assuming that it was—the first suit would preclude the second. *Id.* at 841-42; *see also Klayman v. Porter*, No. 22-13025, 2023 WL 2261814, at *3 (11th Cir. Feb. 28, 2023). Critically, for classes under Rule 23(b)(2)—the type of class certified in *D.V.D.*, *see D.V.D.*, 778 F. Supp. 3d at 385—there is no notice to class members required to bar them from later seeking injunctive relief. *See Wal-Mart Stores, Inc.*, 564 U.S. at 362 (“[Rule 23(b)] provides no opportunity for (b)(1) or (b)(2) class members to opt out.”)

If Petitioner is deemed to be a *D.V.D.* class member, then his third country

removal claims are currently being litigated on his behalf in the District of Massachusetts. *Compare* Am. Pet. ¶ 106 (“ICE and DHS have failed to provide Petitioner[s] or [their] counsel with any advance notice of a third country of removal and has failed to provide Petitioner[s] and his counsel with the requisite due process to ensure he is not tortured in any third country that [they] may be potentially removed to”), *with D.V.D.*, 778 F. Supp. 3d at 369 (“Plaintiffs challenge Defendants’ policy or practice of failing to provide notice and an opportunity to be heard prior to removal to a country that was not designated in their removal orders”); *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 207 (D.D.C. 2020) (collecting cases confirming that “certification of a 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief”).

Because Petitioner’s Fifth Amendment claims challenging third country removal overlap with those at issue before the Massachusetts court in *D.V.D.*, a grant of relief would be improper as any grant of relief to Petitioner individually here may conflict with the eventual relief, if any, provided to the *D.V.D.* class. *See e.g.*, *Nat’l Black Police Ass’n*, 108 F.3d 346, 349 (D.C. Cir. 1997); *Rahman v. Blinken*, No. 23-cv-3235 (JDB), 2024 WL 4332603, at *8 (D.D.C. Sept. 27, 2024) (“Individual suits for injunctive and equitable relief . . . cannot be brought where there is an existing class action. To permit them would allow interference with the ongoing class action.”) (cleaned up). In fact, courts have appropriately dismissed habeas petitions in full where they raise the same claims as those to the *D.V.D.* plaintiffs’ status as *D.V.D.* class members. *See, e.g.*, *Qasemi v. Kurzdorfer*, No. 25-cv-668-FPG, 2025 WL 2938607, *6

(W.D.N.Y. Oct. 16, 2025) (“Although Petitioner is no longer subject to preliminary injunctive relief in the *D.V.D.* case, he remains a class member whose equitable claims are presently being litigated in that forum. It would be inappropriate for the Court to inject itself into that ongoing litigation.”); *Iakubov v. Figueroa*, No. 25-cv-03187-PHX-KML (JZB), 2025 WL 2731355, *1 (D. Ariz. Sept. 25, 2025) (dismissing third-country removal claim where petitioner was a member of the *D.V.D.* class); *Sanchez v. Bondi*, No. 1:25-cv-02287-CNS, 2025 WL 2550646, *3 (D. Colo. Aug. 20, 2025) (declining to grant relief when “the relief Mr. Sanchez seeks mirrors the relief sought by [the *D.V.D.* class]” but explaining “that nothing in the Court’s order precludes Mr. Sanchez’s entitlement to seek relief as a member of the *D.V.D.* class”); *Ghamelian v. Baker*, No. 25-cv-02106-SAG, 2025 WL 2049981, *3 (D. Md. July 22, 2025), *reconsideration denied*, 2025 WL 2074155 (D. Md. July 23, 2025) (denying relief because of petitioner’s status as a *D.V.D.* class member); *Tanha v. Warden, Baltimore Det. Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, *5 (D. Md. July 22, 2025) (“The court finds that Petitioner is a member of the *D.V.D.* Class.”); *I.V.I. v. Baker*, No. 25-cv-1572-JKB, 2025 WL 1519449, at *2 (D. Md. May 27, 2025) (“Even stripped of any reference to the District of Massachusetts’ order, these claims are the same as (or substantially related to) the class claims being litigated in that district.”).

CONCLUSION

The court should deny this petition. This Court is barred from considering Petitioner’s claims under two separate provisions of the INA. Furthermore,

Petitioner—detained for the purpose of executing his final order of removal—has been properly detained pursuant to 8 U.S.C. § 1231 consistent with the applicable regulations. Respondents have acted lawfully and this Petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 14, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system which will serve a copy to all counsels of record.

Dated: January 14, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney