

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ERNEST JOSEPH,

Petitioner/Plaintiff,

Case No.: 3:25-cv-1579-MMH-PDB

v.

SCOTTY RHODEN, in his official
Capacity as Warden of Baker County
Detention Center as Sheriff of Baker
County Sheriff's Office, *et al.*

Respondents/Defendants.

**RESPONSE AND MOTION TO DISMISS PETITION AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF (ECF 1)**

The federal Respondents/Defendants, hereby respond to Ernest Joseph's (Petitioner), December 19, 2025 Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief (ECF 1).¹

¹The court's order (ECF 5) ordered Respondents to respond to the petition by January 7, 2026. It is not clear whether the order compels a response as required by Rule 12(a) to all claims including those which might be construed as seeking other forms of relief (e.g. the request to enjoin future detention should habeas relief be granted, ECF 1 at p. 37). Furthermore, to the undersigned's knowledge, service of the Petition and Complaint has not been perfected as required by Rule 5(i). This response includes certain defensive arguments in an abundance of caution. Defendants preserve and do not waive any additional defenses which might be raised in response to relief other than habeas relief sought by the Petition and Complaint.

BACKGROUND

Petitioner has a valid final order of removal since 2007 but has remained in the United States. *See* Ex. A, Removal Order. On October 19, 2006 Petitioner was convicted of three felonies including armed robbery, aggravated assault, and aggravated assault on a law enforcement officer for which a 10-year sentence was imposed. *See* Ex. B, Notice to Appear. He entered immigration custody for purposes of removal for the first time on or about April 12, 2011. Petitioner previously sought and obtained habeas relief in the Northern District of Florida² 2012 because the district court determined, 13 years ago, there was no significant likelihood of removal at that time.

Petitioner was placed on supervision in 2012. His Order of Supervision (OSUP) was recently revoked pursuant to 8 C.F.R. §241.13(j) because there is a significant likelihood that he may be removed in the reasonably foreseeable future. *See* Ex. C, Declaration at ¶5 and Ex. D, Notice of Revocation. Petitioner was taken into custody on December 15, 2025 and filed his Petition four days later on December 19, 2025. ICE is moving forward with removal to Mexico and has a plan in place for his removal. *Id.* at ¶6-12.

ARGUMENT IN OPPOSITION

A. The court lacks jurisdiction.

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins.*

² *Joseph v. Eric H. Holder, et al.*, No. 4:11-cv-525-SPM-WCS.

Co. of Am., 511 U.S. 375, 377 (1994). They “possess only that power authorized by Constitution and statute.” *Id.* (citations omitted). In the context of immigration habeas cases related to removal—like here—the Immigration and Nationality Act (“INA”) divests this Court’s jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g). As discussed, the Court lacks jurisdiction over Petitioner’s claims. Regardless of how the filings are framed by Petitioner, he challenges the revocation of his OSUP and detention to execute a final order of removal.

1. Jurisdiction Stripping Under § 1252(g)

There is no jurisdiction to review “any” claim “arising from the decision or action” to “execute removal orders.” 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to “execute” a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (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.”); *Johnson v. U.S. Attorney General*, 847 F. App’x 801, 802 (11th Cir. 2021); *Gupta*

v. McGahey, 709 F.3d 1062, 1065 (11th Cir. 2013).³ Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, the provision bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.”).

Petitioner’s OSUP was revoked, and he was detained to execute the final removal order. ICE is in the process of executing removal. This action is an effort to interfere with or halt that legal process. The INA plainly strips the Court’s jurisdiction in these instances. 8 U.S.C. § 1252(g). Also, the Court lacks jurisdiction for a separate reason.

2. Jurisdiction Stripping Under § 1252(b)(9)

There is no jurisdiction to review “all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States” outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the “zipper clause.” *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is “a jurisdictional bar where” petitioner seeks “review

³ See also *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) (“Under 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 judicial review.”); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) (“The plain text of § 1252(g) covers decisions about whether and when to execute a removal order.”); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

of an order of removal [or] the decision to seek removal.” *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—“a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *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 Bonhometre 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 encompasses more than § 1252(g). *AADC*, 525 U.S. at 483. Under these provisions, “most claims that even relate to removal” are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal A*, 964 F.3d at 1257. But a claim obviously “arises from a removal proceeding when the parties are challenging removal proceedings.” *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19. Here, the crux of this case challenges ICE’s execution of Petitioner’s final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

3. *Conclusion of Jurisdiction Stripping*

As discussed above, Petitioner's claims fall squarely within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court, therefore, lacks subject-matter jurisdiction and must dismiss.⁴

B. Petitioner's detention is lawful.

Even if the Court disagrees with the above, it must still deny the writ. Petitioner has been detained since December 15, 2025, just 23 days as of this response. Although he was previously detained to effectuate removal, he was released on an order of supervision because his removal was found to be unlikely 13 years ago. Petitioner's prior time in detention should not be counted in the aggregate to evaluate the reasonableness of his current detention because, if that were the analysis, even one day of detention for the purpose of removal would be considered unreasonable. If the court mechanically counted detentions in the aggregate, "[a]ny subsequent period of detention, even one day, would raise constitutional concerns." *Barrios v. Ripa*, No. 1:25-cv-22644, 2025 WL 2280485, *8 (Aug. 8, 2025). "Adjudicating the constitutionality of every re-detention would obstruct an area that is in the discretion of the Attorney General—effectuating removals. See 8 U.S.C. § 1252(g)." *Id.* See also

⁴ This court's recent decision in *Gutierrez Ortiz v. Noem*, 3:25-cv-1386-MMH-MCR, 2025 WL 3653217 (M.D. Fla. Dec. 17, 2025) concerning jurisdiction is distinguishable because, in that case, there was no final order of removal or execution of an order of removal—the issue concerned whether Guitterez was entitled to a bond hearing and whether his detention should be classified under 8 U.S.C. § 1225 versus §1226.

Meskini v. Att'y Gen. of United States, No. 4:14-CV-42-CDL, 2018 WL 1321576, at *4 (M.D. Ga. Mar. 14, 2018) (finding that *Zadvydass* is not a “Get Out of Jail Free Card that may be redeemed at any time just because an alien was detained too long in the past.” (internal quotation omitted)).”

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydass v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydass*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydass*, 533 U.S. at 683. This is called a “post-removal” period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supremes interpret this post-removal period to allow extended detention for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydass*, 533 U.S. at 689. In all, a reasonable length of detention “is presumptively six months.” *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydass*, 533 U.S. at 689. That framework applies

here, and Respondents satisfy it.

With *Zadvydas*, the “basic question” is “whether the detention in question exceeds a period reasonably necessary to secure removal.” *Zadvydas*, 533 U.S. at 699. Here, Petitioner’s detention since December 15, 2025 is reasonable under *Zadvydas* given the SLRRFF to Mexico. His current detention is reasonably necessary to secure his removal. *See e.g. Akinwale*, 287 F. 3d at 1051 (petition dismissed despite detention for a period of 4 months prior to the filing of the petition).

Petitioner must first articulate a good reason to believe that there is no “significant likelihood of removal in the reasonably foreseeable future (SLRRFF)”. Petitioner alleges that DHS lacks proof of Haitian citizenship, that he was rejected by Haiti during a charter removal flight (in 2011), no third country has agreed to accept him, there has been no diplomatic breakthrough or newly obtained identity documents, and no concrete removal plan. ECF 1 at ¶91.⁵ Most of the facts alleged by Petitioner are facts that existed 13 years ago and fail to articulate a good reason to believe that there is no SLRRFF. The challenges of removal to Haiti simply are not present here.

Assuming for the sake of argument the court finds these outdated facts sufficient to show good reason, Respondents show the court that there is a significant likelihood

⁵ Petitioner cites *D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. Apr. 18, 2025) for the proposition that it would be unlawful for him to be removed to a third country absent consent or “constitutionally adequate due process.” ECF 1 at p. 4. However, the district court order in *D.V.D.* provides no basis to grant Petitioner the relief that he seeks. The injunction in *D.V.D.* was stayed by the United States Supreme Court. *See D.H.S. v. D.V.D.*, 145 S. Ct. 2153 (2025). To be clear, Petitioner challenges only his detention, not removal to a third country.

of removal based on the facts set forth in the declaration attached as Exhibit C. Petitioner is in the process of removal to Mexico, under 8 U.S.C. §1231(b)(2)(E). *Id.* at ¶6-7. ICE has a plan for his removal. *Id.* at ¶¶7-12. His detention is necessary to effectuate his removal under that plan. Based on the factual circumstances that led to his prior habeas relief and the allegations of the petition itself, third country removal is appropriate here, authorized by statute, and not challenged by the petition. Respondents have established that Petitioner cannot meet his burden. *See Akinwale, 287 F.3d at 1051* (affirming denial of writ of habeas corpus where the petitioner “failed to ‘present any facts indicating that the INS is incapable of executing his removal to Nigeria and that his detention will, therefore, be of an indefinite nature.’”). The petition should be denied.

C. Petitioner’s OSUP was lawfully revoked.

Petitioner asks the court to review a decision to revoke Petitioner’s OSUP, a decision that the court lacks jurisdiction over. In short, ICE exercised its discretion to revoke Petitioner’s OSUP and complied with its obligations in doing so. There is nothing within OSUP or the intervening events that suggest an ICE violation. Quite the opposite, ICE followed the regulatory procedure for revoking the OSUP.

Petitioner relies heavily on regulatory compliance—particularly 8 C.F.R. §§ 241.4 and 241.13—contending ICE failed to comply with procedure. He incorrectly alleges “none of the regulatory predicates for revocation . . . “ exist. ECF 1 at ¶104. ICE has provided notice and conducted an interview. *See Exs. D and E, Alien*

Informal Interview. In exercising its discretion, ICE revoked the OSUP due to changed circumstances because it determined there is now SLRRFF. *See* Ex. C, Declaration.

The procedure described above is exactly what relevant regulations require. 8 C.F.R. §§ 241.13(j); 241.4(l). Since ICE did not violate any regulations, each of Petitioner's claims concerning revocation of his OSUP under habeas, the APA, and the Fifth Amendment, fails.

Section 241.13 “establishes special review procedures for those aliens who are subject to a final order of removal and are detained . . . where the alien has provided good reason to believe there is no significant likelihood of removal . . . in the reasonably foreseeable future.” *Id.* § 241.13(a). OSUPs must specifically “promote the ability of [ICE] to effect the alien's removal as ordered, or removal to a third country, should circumstances change in the future.” *Id.* § 241.13(h).

ICE can revoke an OSUP. *Id.* § 241.13(i). Notably, it may revoke “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” *Id.* § 241.13(i)(2). ICE must then provide an informal interview—allowing the alien to respond and submit any evidence regarding SLRRFF. *Id.* § 241.13(i)(3). If ICE determines revocation and detention still remain appropriate, an alien may seek another request for review based on any additional evidence. *Id.* § 241.13(j).

Likewise, the procedure required by § 241.4 does not change the outcome. That

provision sets out procedures and “authority to continue an alien in custody or grant release or parole.” 8 C.F.R. § 241.4(a). Certain officials “may continue an alien in custody beyond the removal period . . . pursuant to the procedures described in this section.” *Id.*

For aliens released on supervision, authorities have broad powers to revoke their status. *Id.* § 241.4(l). Again, notice and interview procedures apply when ICE revokes release due to violations of OSUP conditions. *Id.* § 241.4(l)(1), (3). Yet one subsection—§ 241.4(l)(2)—likely does not include those notice, explanation, or interview requirements. *Id.* § 241.4(l)(2); *Tanha v. Warden, Balt. Detention Facility*, No. 1:25-cv-02121-JRR, 2025 WL 2062181, at *6 n.10 (D. Md. July 22, 2025). Unlike § 241.4(l)(1) concerning violations of conditions, § 241.4(l)(2) contains no language about notice or an informal interview. Regardless, of the notice procedure required, § 241.4(l) vests broad “discretion” if “in the opinion of the revoking official” ICE should “enforce a removal order” (among other options). 8 C.F.R. § 241.4(l)(2).

This “regulation permits the Government extraordinarily broad discretion to revoke an OSUP.” *Tran v. Baker*, No. 1:25-cv-01598-JRR, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). In fact,

the regulation does not compel the Government to demonstrate what facts or factors, if any, it considered in deciding to revoke; nor does the regulation (or any other authority of which the court has been made aware) require the Government to demonstrate what, if any, steps it took to effect or secure removal prior to OSUP revocation.

Id.; see also *Grigorian*, 2025 WL 1895479, at *6 (noting differences between both

subsections).

ICE revoked the OSUP. Nothing in the Northern District of Florida's 2012 order precluded revocation of the OSUP. The revocation was based on ICE's discretionary determination that circumstances changed and there is now SLRRFF. Because ICE provided Petitioner notice and an informal interview required by either § 241.4(l) or § 241.13(i), he cannot establish a violation to sustain his challenges premised on violations of due process or the APA.

Crucially, the actual decision to revoke is entirely discretionary and beyond the Court's review—it can only maybe review the process by which revocation occurred.⁶ *Navarro v. Bondi*, No. 8:25-cv-3213-KKM-NHA, 2025 WL 3275944, at *2 (M.D. Fla. Nov. 25, 2025) (“In the present context, courts differentiate between the decision to revoke an OSUP and a failure to follow procedures in doing so.” (cleaned up)); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 154 (W.D.N.Y. 2025) (“In other words, while courts cannot question the discretion that is exercised, they can address the process used to exercise that discretion.”). Put bluntly: courts “will not further scrutinize ICE's discretionary decision” in that regard. *Roe v. Oddo*, No. 3:25-CV-128, 2025 WL 1892445, at *8 (W.D. Pa. July 9, 2025); *Yi Mei Zhen v. ICE*, No. 3:25-cv-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025).

What's more, even if the Court could get to the issue of SLRRFF, Petitioner

⁶ Again, the revocation of an OSUP is clearly a “decision or action” to “execute removal orders” stripped from the Court's jurisdiction. 8 U.S.C. § 1252(g).

cannot show its absence. It appears his entire argument on the matter is the Haitian government to date has not allowed him to go back to his home country. But that single fact falls short on a lack of SLRRFF showing. *Godinez Perez*, 2025 WL 2806557, at *3 (holding SLRRFF not established on conclusory allegations even for alien who had withholding of removal to home country).

Even if some further notice and an interview were required, the proper relief would be ordering that to occur. *See Yi Mei*, 2025 WL 2258586, at *10 n.19 (noting “even if these procedures have not yet been completed, courts have found that such procedures may take place after the detention has occurred”). The remedies sought of release from custody are “an overreach and not the appropriate cure.” *Tanha*, 2025 WL 2062181, at *6; *see also Tran*, 2025 WL 2085020, at *6-7 (holding errors in notice procedure “do not entitle [petitioner] to release from detention”). The proper remedy for these allegations would be—at most—ordering ICE to provide Petitioner notice and an informal interview before removal. *See, e.g., I.V.I. v. Baker*, No. JKB-25-1572, 2025 WL 1811273, at *3 (D. Md. July 1, 2025) (“And while habeas is a proper vehicle to challenge detention that is without statutory authority or violative of the Constitution, it is not a proper vehicle for vindicating every procedural error the Government may have committed along the way.”).

True, some courts have ordered release when they believed ICE should be providing more robust notice and hearing. *E.g., Grigorian v. Bondi*, No. 25-CV-22914-RAR, 2025 WL 2604573, at *8-10 (S.D. Fla. Sept. 9, 2025). Respectfully, many of

these decisions appear driven by policy disagreement with the current immigration enforcement environment rather than grounding in any cognizable law. To be clear, there is nothing in the INA or relevant regulatory scheme providing for full-blown evidentiary hearings with defined preparation deadlines when ICE revokes an OSUP. The regulations simply say aliens get an “informal interview” after revocation to contest revocation and detention. 8 C.F.R. §§ 241.4(l)(1); 241.13(j)(3). And if that doesn’t result in release, the alien can request a more thorough review. 8 C.F.R. §§ 241.4(l)(3); 241.13(j).

At this stage, ICE already provided the minimum notice and hearing required by regulation. To conclude otherwise would simply be reading more requirements into ICE’s own regulations to say it should be providing more initial opportunity for aliens to contest revocation and detention. But that isn’t adjudicating a due process or *Accardi* claim; that’s policymaking. Due process is simply the process due under the law and circumstances—not an individuals most desired procedure. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (cleaned up)).

ICE can revoke OSUPs in its discretion based on its determinations—which are substantively unreviewable. ICE can continue to detain if an alien does not change its mind after informal interview. All this happened here. Now, Petitioner is free to contest SLRRFF with ICE again using the regulatory procedure and providing

evidence in support of his position. Or if he is not removed within the 180-day *Zadvydas* time, he can refile a habeas petition to challenge SLRRFF before the Court. Until then, this action is premature and there is nothing for the Court to review.

In short, ICE did not violate any OSUP regulations and the revocation of Petitioner's OSUP was lawful.

D. The court lacks subject-matter jurisdiction over Petitioner's APA claims.

The court lacks subject matter jurisdiction as to Petitioner's claims challenging his detention under the APA, and they should be dismissed under Fed. R. Civ. P. 12(b)(1). For the reasons discussed in Section C, *supra*, the actual decision to revoke an OSUP is entirely discretionary and beyond the Court's review—it can only perhaps review the process by which revocation occurred. APA review is not available for agency action that is committed to agency discretion by law. 5 U.S.C. § 701(a)(2). *See also Stone v. Comm'r of Internal Revenue*, 86 F.4th 1320, 1327 (11th Cir. 2023) (“Judicial review under the APA is inappropriate, however, when “agency action is committed to agency discretion by law.”) Under 8 C.F.R. §241.4(l)(2) “[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section.”

Additionally, Petitioner cannot seek relief under the APA because habeas is an adequate alternate remedy such that APA review is improper. “Agency action made reviewable by statute and final agency action *for which there is no other adequate remedy*

in a court are subject to judicial review. 5 U.S.C. § 704 (emphasis added). Petitioner has pled a claim for habeas relief here which, if granted, would afford an adequate remedy. Where there is an adequate remedy at law, the court lacks subject matter jurisdiction. *See Heslop v. Attorney General of U.S.*, 594 Fed.Appx. 580, 584 (11th Cir. 2014) (affirming dismissal of APA claim for lack of subject matter jurisdiction where adequate remedy at law existed).

E. Petitioner’s claims for injunctive relief should be dismissed under Fed. R. Civ. P. 12(b)(1) and (6).

Petitioner’s claims for injunctive relief should be dismissed under Fed. R. Civ. P. 12(b)(1) and (6). The court lacks jurisdiction because Petitioner lack standing to obtain injunctive relief against future detention because future re-detention is a conjectural, contingent, or hypothetical threat of future injury. *See Shotz v. Cates*, 256 F. 3d 1077, 1081 (11th Cir. 2001). Petitioner has not alleged a real and immediate threat of future re-detention. Furthermore, if he is released from detention and placed back on supervision, violations of any OSUP would lawfully subject him to re-detention. If Respondents do not prevail in establishing SLRRFF here and he is released, circumstances may arise in the future where SLRRFF is established.

Petitioner’s request for injunctive relief also violates the separation of powers. *See e.g. Morrison v. Olson*, 487 U.S. 654, 678 (1988) (“The purpose of this limitation is to help insure the independence of the Judicial Branch and to prevent the Judiciary from encroaching into areas reserved for the other branches.). “[T]he Executive Branch—not the Judiciary—makes arrests and prosecutes offenses on behalf of the

United States.” *United States v. Texas*, 599 U.S. 670, 679 (2023). The court should decline Petitioner’s invitation to improperly restrict ICE’s authority to detain Petitioner in the future. *Noem v. Vasquez Perdomo*, 222 L.Ed.2d 1213, 2025 WL 2585637, *5 (Sep. 8, 2025) (mem.) (“[t]he Judiciary] merely ensure[s], in justiciable cases, that the Executive Branch acts within the confines of the Constitution and federal statutes . . . we now likewise must decline to step outside our constitutionally assigned role to improperly *restrict* reasonable Executive Branch enforcement of the immigration laws.”). Petitioner’s request for injunctive relief should be dismissed for lack of subject matter jurisdiction.

Petitioner’s claim for injunctive relief also fails to state a claim and should be dismissed under Rule 12(b)(6) because Petitioner seeks habeas relief under the guise of declaratory relief insofar as he seeks an order “declaring Plaintiff-Petitioner’s continued detention to be contrary to law, arbitrary and capricious, and violative of the Fifth Amendment of the U.S. Constitution.” Petitioner cannot rely on the Declaratory Judgment Act for this purpose. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (“For we have held that any claim by a prisoner attacking the validity or duration of his confinement must be brought under the habeas sections of Title 28 of the United States Code.”) *citing Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). *See also Zaidi v. United States Sentencing Commission*, 144 F. Supp. 3d 1, 2 (D.D.C. 2015) (“The D.C. Circuit has recognized that sometimes a declaratory judgment action is not really

a declaratory judgment action—but instead a habeas corpus action.”). As such, Petitioner fails to state a

Additionally, dismissal under Rule 12(b)(6) is proper because Petitioner also seeks an order declaring unlawful and permanently enjoining re-detention of Petitioner by DHS absent (i) evidence of materially changed circumstances and (ii) sufficient prior written notice to Plaintiff-Petitioner and a constitutionally adequate individualized opportunity to be heard. ECF 1 at p. 37. Neither of those conditions are required by law to detain Petitioner and he cites no legal authority for the proposition that the court can enjoin the Executive branch’s detention of Petitioner in the future absent a showing of “evidence of materially changed circumstances and sufficient prior written notice to Plaintiff-Petitioner and a constitutionally adequate individualized opportunity to be heard.”

F. Conclusion

Petitioner has had a valid order of removal since 2007. He is now in the process of being removed to Mexico. Even if the court had jurisdiction to review his detention related to efforts to effectuate his removal, the court must deny habeas relief because Respondents have met their burden to show a significant likelihood of removal in the reasonably foreseeable future. To the extent Petitioner seeks other relief outside of habeas relief, his complaint should be dismissed because the court lacks jurisdiction and the pleading fails to state valid claims for injunctive and declaratory relief.

Dated: January 7, 2026.

Respectfully submitted,

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EXHIBIT A

Joseph v. Rhoden, et al.

Case No.: 3:25-cv-1579-MMH-PDB