

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

DAVID FERRER LESCAILLE,

Petitioner,

v.

KELIE WALKER, ET AL.,

Respondents.

Case No. 2:26-cv-0011-KCD-NPM

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

Petitioner Antonio David Ferrer Lescaille ("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"), ¶¶ 17, 22. He was paroled into the United States in 1980. *Id.* at ¶¶ 17, 22. On October 2, 2003, Petitioner was ordered removed from the United States. *Id.* at ¶¶ 1, 22; *see also* ECF No. 1-1. Following the entry of this order, Petitioner was released

on an order of supervision. Petition, ¶¶ 2, 23. On November 12, 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. *Id.* at ¶¶ 3, 17, 24. On December 27, 2025, Petitioner attempted to join an existing habeas petition as an additional petitioner in another matter before this Court. *See Ochoa Banega v. Warden, Florida Soft Side South, et al.*, No. 2:25-cv-1152-JES-DNF at Dkt. 9. However, on December 29, 2025, Judge Steele dismissed him from that case. *See Ochoa Banega*, No. No. 2:25-cv-1152-JES-DNF at Dkt. 12. He then filed the instant Petition seeking habeas corpus relief with this Court solely on his own behalf on January 2, 2026. *See* Petition. The Court ordered a response no later than January 26, 2026. ECF No. 3. Petitioner filed an emergency motion seeking a stay of removal to which the government responded, but the motion was denied. *See* ECF Nos. 8, 9, 10. In response to this Court’s order, ECF No. 3, and for the reasons set forth below, Respondents respectfully request that this Court deny all relief.¹

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

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. *See, e.g., Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE either to bring petitioner for a bond hearing or release by a specific date).

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

Respondents acknowledge that this Court’s prior rulings concerning jurisdiction pursuant to 8 U.S.C. §§ 1252(b)(9), (g) 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(g) and 1252(b)(9) as presented in *Cetino*.² *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.

II. Petitioner’s Detention is Lawful

A. The INA mandates Petitioner’s detention.

² 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).

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).

When removal is not effectuated within the 90-day statutory period, the government is also 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 removed in 2003 and he remains subject to a final, executable removal order today. *See* Petition, ¶¶ 1, 22; *see also* ECF No. 1-1. While he was initially released on an order of supervision—*see* Petition, ¶¶ 2, 23—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* Notice of Removal, attached as “Exhibit A.” 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 the regulations at 8 C.F.R. §§ 241.4 and 212.12. *See* Petition, ¶¶ 5, 33-34, 41-42, 51-52. The regulation set forth at 8 C.F.R. § 212.12 was 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, however it is not applicable here. Following the Supreme Court's decision in *Clark v. Martinez* guidance was issued to ICE personnel concerning custody review protocol for individuals including those considered to be Mariel Cubans. *See* Interim Guidance Regarding Post-Order Custody Reviews (POCR) After the Supreme Court Decision in *Clark v. Martinez* ("Exhibit B") at 2 (referring to *Clark v. Martinez*, 543 U.S. 371 (1005)). As the guidance explains "all aliens detained post-final order for 180 days will receive custody reviews pursuant to the regulations under 8 CFR § 241.13. Custody reviews for Mariel Cubans under 8 CFR § 212.12 are no longer in effect, and therefore Cuban Review Plan (CRP) panels and procedures are to be discontinued, effective immediately." *Id.* (emphasis in original). This memo remains in effect and the post-order review scheme outlined therein applies to Petitioner. *See Marquez-Coromina v. Hollingsworth*, 692 F. Supp. 2d 565, 572 (D. Md. 2010) ("While it is mystifying that the regulatory language has not been amended to comport with the Supreme Court's decision in *Clark*, the court is satisfied that 8 C.F.R. § 212.12 has no continuing application to Petitioner's case."). As the court in *Marquez-Coromina* observed in 2010, there is a noticeable absence of reported cases in which detention of Mariel Cubans has continued under 8 C.F.R. § 212.12, likely because *Clark* removed

the post removal order distinctions among 8 U.S.C. § 1231(a)(6)'s three categories of aliens, distinctions that appeared to serve as the basis for separate treatment of Mariel Cubans in the first instance.³ It makes sense then that the interim guidance continues to apply today. Put simply, 8 C.F.R. § 212.12 does not continue to apply, rather the regulations set forth under 8 C.F.R. §§ 241.4 and 241.13 are determinative.⁴

Turning to either of 8 C.F.R. §§ 241.4 or 241.13⁵, Petitioner has again shown no violation. 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* Petition, ¶¶ 34, 51-52, but the record and a simple reading of the regulations belie his argument. First, Petitioner was advised of the basis on which his supervision was revoked and provided with an informal interview. *See* Notice of Revocation of Release and Informal Interview, "Exhibit C." Furthermore, 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 even require that the individual be

³ More recent examples continue to support this conclusion. *See e.g., Sis v. Sessions*, No. 17-CV-24424, 2018 WL 1055695, at *1 (S.D. Fla. Jan. 29, 2018), *report and recommendation adopted*, No. 17-24424-CIV, 2018 WL 1054561 (S.D. Fla. Feb. 23, 2018) (considering Mariel Cuban's detention revocation under 8 C.F.R. § 241.4(b)(4)); *Diaz v. Sessions*, No. 17-CV-24246, 2018 WL 11447650, at *1 (S.D. Fla. Jan. 24, 2018), *report and recommendation adopted*, No. 17-24246-CIV, 2018 WL 11447649 (S.D. Fla. Feb. 23, 2018) (Mariel Cuban with order of supervision revoked under 8 C.F.R. § 241.13).

⁴ Even were 8 C.F.R. § 212.12 applicable, as the regulation provides that "[t]he 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." 8 C.F.R. § 212(g)(1). Any claim of violation is thus premature where Respondents remain within the period for review. Furthermore, deviation from the stated timeline does not in and of itself amount to a due process violation.

⁵ Petitioner asserts violation of 8 C.F.R. § 241.4 only.

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)).

And as to 8 C.F.R. § 241.13 specifically, 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*). 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 further 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.

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 this Court, a plaintiffs’ motion for a preliminary injunction seeking to prevent the State of Florida from holding immigration detainees at the facility was denied. *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. Petition, ¶ 42; *see also* Petition, ¶¶ 34, 51-52. 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.⁶ Instead,

⁶ 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).

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* Petition, Prayer for Relief at (b)—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, in March 2025, four aliens commenced a lawsuit in the District Court for the District of Massachusetts 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* Petition, ¶ 51 (“ICE and DHS have failed to provide Petitioner and his counsel with any advance notice of a third country of removal and has failed to provide Petitioner and his counsel with the requisite due process to ensure he is not tortured in any third country that he 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 20, 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 20, 2026

Signed:

/s/ Amanda Saylor

Amanda Saylor

Assistant United States Attorney