

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-00112-CNS

KARIM CHENNAH,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Aurora Contract Detention Facility owned and operated by GEO Group, Inc.,
ROBERT HAGAN, Acting Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
TODD LYONS, Acting Director of Immigration and Customs Enforcement, and
PAMELA BONDI, Attorney General, U.S. Department of Justice,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 5)

Petitioner's Verified Petition for Writ of Habeas Corpus (ECF No. 1, the Petition) and Emergency Motion for Temporary Restraining Order (ECF No. 2, the Motion) should be dismissed or denied.

While Petitioner contends that he is subject to "indefinite—and potentially permanent—civil detention," he has a final order of removal and was actively in the process of being removed from the United States to a third country—Cameroon—when he filed his Petition. While Petitioner cannot be imminently removed to that third country, Respondents are continuing to take active steps to effectuate his removal. Petitioner thus cannot succeed under *Zadvydas v. Davis*, 533 U.S. 678 (2001), which only prohibits immigration

detention when there is *no* significant likelihood of removal in the reasonably foreseeable future, and the detention is therefore in danger of becoming indefinite.

To try and alleviate this issue, Petitioner also urges that the third-country removal Respondents arranged is unlawful. In Petitioner's view, he should still be released under *Zadvydas* because there is no significant likelihood of *lawful* removal in the reasonably foreseeable future. This is, in essence, an attempt to relitigate the class-wide preliminary injunctive relief prohibiting third-country removal that a non-optout class of noncitizens sought and were denied by the U.S. Supreme Court in *D.V.D. v. DHS*, 145 S. Ct. 2153 (2025) (per curiam). But Petitioner, as a member of the *D.V.D.* class, cannot pursue independent equitable claims on the issues being litigated in that case. And even if that were not the case, Petitioner's theory would defy the Supreme Court's decision in *D.V.D.* that the *D.V.D.* class is not entitled to preliminary injunctive protection from removal.

The Court should thus dismiss the Petition and lift its injunction prohibiting Petitioner's removal.

BACKGROUND

A. Legal Background

Detention under 8 U.S.C. § 1231. The Immigration and Nationality Act (INA) authorizes the detention of noncitizens who are subject to removal orders. 8 U.S.C. § 1231. In general, the Department of Homeland Security (DHS) must remove noncitizens who have been ordered removed "within a period of 90 days," also known as the "removal period." *Id.* § 1231(a)(1)(A). During the removal period, detention of the noncitizen is mandatory until removal occurs. *Id.* § 1231(a)(2). Once the removal period is up, DHS

may continue to detain noncitizens who are inadmissible under 8 U.S.C. § 1182 or who are determined to be “a risk to the community or unlikely to comply with the order of removal.” *Id.* § 1231(a)(6).

DHS has adopted an administrative process for evaluating whether continued detention is warranted. Post-Order Custody Reviews (POCRs), performed to determine whether the noncitizen will be released or remain detained, are conducted at 90-days and 180-days following the issuance of a final order of removal. 8 C.F.R. § 241.4(k). Reviews prior to the end of the 90-day removal period are conducted by the district director or Director of the Detention and Removal Field Office. *Id.* “The district director or Director of the Detention and Removal Field Office will provide written notice to the detainee approximately 30 days in advance of the pending records review” performed for the 90-day review “so that the alien may submit information in writing in support of his or her release.” 8 C.F.R. § 241.4(h)(2). The noncitizen will be notified “in writing that he or she is to be released from custody, or that he or she will be continued in detention pending removal or further review of his or her custody status.” *Id.* § 241.4(h)(4).

If a noncitizen is not released or removed within 90 days of the Field Office Director’s decision, subsequent custody decisions are made by the Headquarters Post-Order Detention Unit (“HQPDU”). 8 C.F.R. § 241.4(c)(2). The regulations provide for PCR’s every 90 days by the HQPDU until the noncitizen is released from detention or removed from the United States. *Id.* § 241.4(k)(2)(iii). As part of the 180-day review, if a review panel does not recommend a noncitizen for release or if recommendation of release is

not granted after a records review, a review panel “shall personally interview the detainee.” *Id.* § 241.4(i)(3)(i). “Following completion of the interview and its deliberations, the Review Panel shall issue a written recommendation that the alien be released or remain in custody pending removal or further review.” *Id.* § 241.4(i)(5). An Executive Associate Commissioner then considers the recommendation and issues a custody determination. *Id.* § 241.4(i)(6).

For both the 90-day and subsequent reviews, the regulations provide that “[a] copy of any decision . . . to release or to detain an alien . . . shall be provided to the detained alien.” 8 C.F.R. § 241.4(d). “A decision to retain custody shall briefly set forth the reasons for the continued detention.” *Id.*

Third-country removal. Congress has provided a framework for determining the country to which a noncitizen may be removed. 8 U.S.C. § 1231(b). A noncitizen ordered removed “may designate one country to which the alien wants to be removed.” *Id.* § 1231(b)(2)(A). But in certain circumstances, DHS will not remove the noncitizen to their designated country—for example, if the country is unwilling to accept them. *See id.* § 1231(b)(2)(C)(iii). The next preference is “a country of which the alien is a subject, national, or citizen,” *id.* § 1231(b)(2)(D); followed, if that country is not an option, by a country that has a connection to the noncitizen, *id.* § 1231(b)(2)(E)(i)-(vi). But if removal to each of those countries is “impracticable, inadvisable, or impossible,” the noncitizen may be removed to “another country whose government will accept the alien into that country.” *Id.* § 1231(b)(2)(E)(vii). This is known as “third-country removal.”

In removal proceedings, a noncitizen's removal to a particular country may be "withheld" or "deferred" based on the United States' obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 1208.16-1208.18. The noncitizen seeking withholding or deferral of removal must "establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." *Id.* § 1208.16(c)(2) (withholding of removal); *see also id.* § 1208.17(a) (deferral of removal).

A grant of withholding or deferral of removal to one country does not bar removal to a different country. The implementing regulations expressly provide that "[n]othing in [the regulations] shall prevent [DHS] from removing an alien to a third country other than the country to which removal has been withheld or deferred." 8 C.F.R. § 1208.16(f). Thus, "[i]f an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States." *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) (emphases in original).

First, DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. Ex. 1, Declaration of M. Kinsey ("Kinsey Decl."), ¶¶ 18-19. *Id.* If it has, and if the Department of State believes those assurances to be credible, then the alien may be removed without the need for further procedures. *Id.*

Second, if assurances have not been provided (or are not believed credible), DHS will inform the alien of removal to that country. *Id.* If the noncitizen then affirmatively states a fear of removal to that country, DHS will refer them to USCIS for a screening to

determine if they are eligible for protection from removal to that country under “withholding of removal” (8 U.S.C. § 1231(b)(3)) and under the CAT. *Id.*

The *D.V.D.* Class Action. Challenges to the procedures that apply to third-country removal are currently presented in a certified non-optout nationwide class action pending in the District of Massachusetts. See *D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.) (hereinafter *D.V.D.*). In March 2025, four plaintiffs instituted the *D.V.D.* class action challenging their third-country removals. The *D.V.D.* plaintiffs moved for an emergency temporary restraining order, which was granted on March 28, 2025. See *D.V.D.*, ECF No. 34.

On April 18, 2025, the *D.V.D.* court certified a class under Fed. R. Civ. P. 23(b)(2). *D.V.D.*, ECF No. 64. The order certified a non-optout class and established certain procedures to be followed before removing to a third country a noncitizen with a final removal order. Specifically, the non-optout class is defined in relevant part as:

All individuals who have a final order of removal. . . whom 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.

D.V.D., ECF No. 64 at 23.

On June 23, 2025, however, the Supreme Court stayed the remedial portion of the *D.V.D.* court’s order. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). The same day, the *D.V.D.* court ordered that its remedial order remained in effect as to eight individual class members DHS sought to remove to South Sudan. See *D.V.D.*, ECF No. 176. Defendants moved to clarify the Supreme Court’s Order, and, on July 3, 2025, the Supreme Court granted the motion, allowing the eight individual class members—who

were not named plaintiffs—to be removed to South Sudan. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025). But the Supreme Court did not disturb the district court's class certification determination. *See generally id.*

B. Factual Background

Petitioner's immigration history. Petitioner is a citizen of Morocco and a gay man. *See* ECF No. 1 ¶ 16. He entered the United States on or about October 17, 2024, and was taken into ICE custody. *Id.* ¶ 28; Kinsey Decl. ¶ 5. While in custody, Petitioner filed an application for asylum, withholding of removal, and CAT protection. ECF No. 1 ¶ 28. At the conclusion of the merits of Petitioner's immigration proceedings in June 2025, the Immigration Judge (IJ) ordered Petitioner removed to Morocco and granted him withholding of removal to Morocco. *Id.* ¶ 29; Kinsey Dec. ¶ 12. Neither Petitioner nor DHS reserved the right to appeal, and the order became final the same day. *Id.* Petitioner has been detained under 8 U.S.C. § 1231 following the IJ's entry of an order of removal in June 2025. Kinsey Decl. ¶ 13.

On November 13, 2025, ICE conducted a POCR pursuant to 8 C.F.R. § 241.4. *Id.* ¶ 15 ICE determined that Petitioner did not satisfy the criteria for release because he poses a significant risk of flight pending removal and ICE expected to receive the necessary travel documents to effectuate removal. *Id.* ICE also determined that, at that time, removal was practicable, likely to occur in the reasonably foreseeable future, and in the public interest. *Id.* ICE continued to detain Petitioner. *Id.*

Efforts to remove Petitioner to a third country. On January 9, 2026, ICE notified Petitioner that he would be removed to Cameroon with the provision of a Notice of

Removal. Kinsey Decl. ¶ 17. He was staged for removal on January 11, 2026 and transported out of the District of Colorado. *Id.* ¶ 20. Petitioner claimed fear of removal to Cameroon, and ICE referred Petitioner to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 21. Between January 13 and 15, 2026, USCIS conducted a third-country screening interview with Petitioner *Id.* ¶ 22. USCIS determined that Petitioner established that it is more likely than not that he will be persecuted if removed to Cameroon. *Id.* ¶ 22. ICE will thus determine whether to move to reopen proceedings before the immigration court for proceedings solely related to eligibility for withholding of removal or CAT, or designate another country for removal. *Id.* ¶ 23.

The Petition and Motion. On January 10, 2026, after Petitioner received his Notice of Removal but before he was transported out of Colorado, Petitioner filed the Petition. *See generally* ECF No. 1. He asserts in the Petition that his detention has become impermissibly prolonged under *Zadvydas* because it has lasted longer than six months without discernible progress toward removal. *Id.* ¶¶ 96-107. He requests his immediate release and a declaration that his continued detention violates the INA and his due process rights. *Id.* at 29 (Prayer for Relief).

The next day, on January 11, 2026, Petitioner filed the Motion. *See generally* ECF No. 2. In the Motion, Petitioner reiterates his *Zadvydas* claim and adds that notwithstanding the commencement of his removal to Cameroon, there is still no significant likelihood of removal in the reasonably foreseeable future. *Id.* at 4-7. According to Petitioner, he expressed a fear of persecution if he is removed to Cameroon and was not given an

opportunity to present that claim before his removal. *See id.* at 5-6. He asks for preliminary injunctive relief enjoining Respondents from transferring him from the District of Colorado and from removing him from the United States. The same day, but after Petitioner had already been transferred from the District of Colorado, the Court, acting pursuant to the All Writs Act, 28 U.S.C. § 1651(a), ordered Respondents not to remove Petitioner from the District of Colorado or the United States without further leave of court. ECF No. 5.

Respondents are in the process of arranging Petitioner's return to the District of Colorado. Kinsey Decl. ¶ 23. ICE ERO expects him to return to Denver by January 22, 2026. *Id.*

ARGUMENT

I. Petitioner cannot succeed under *Zadvydas* because his removal is significantly likely in the reasonably foreseeable future.

Petitioner argues in that his continued detention violates due process because it has extended beyond a six-month period after the final order of removal and that removal is not reasonably foreseeable. *See* ECF No. 1 ¶¶ 76; ECF No. 2 at 4-5.

This argument is based on the Supreme Court's ruling in *Zadvydas* that 8 U.S.C. § 1231(a)(6) authorizes detention of a noncitizen who has been ordered removed, but only so long as the detention does not violate due process. In *Zadvydas*, the Supreme Court held that the detention of a noncitizen for up to six months under 8 U.S.C. § 1231 is "presumptively reasonable." 533 U.S. at 700-01. The Court determined that detention beyond six months does not, by itself, mean that the noncitizen must be released. *Id.* at 701. Rather, after six months, "once the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the

[g]overnment must respond with evidence sufficient to rebut that showing.” *Id.* at 701; see also *Soberanes v. Comfort*, 388 F.3d 1305, 1311 (10th Cir. 2004) (“[T]he onus is on the [noncitizen] to ‘provide[] good reason to believe that there is no [such] likelihood’ before ‘the Government must respond with evidence sufficient to rebut that showing’” (quoting *Zadvydas*, 533 U.S. at 701)).

As of the date of this filing, Petitioner has been detained for 209 days since his order of removal became final. See ECF No. 1 ¶¶ 29-30. Petitioner thus has the burden to “provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future[.]” See *Zadvydas*, 533 U.S. at 701 (emphasis added).

He cannot meet this burden. Petitioner was actively in the process of being removed when he filed his Petition. See Kinsey Decl. ¶¶ 19-20. Moreover, ICE is continuing to take steps to effectuate Petitioner’s removal by determining whether to pursue renewed proceedings in the immigration court or whether to designate another country for removal. *Id.* ¶ 23.

II. *Zadvydas* does not entitle Petitioner to additional process before he is removed.

Petitioner’s apparent basis for arguing that removal is not reasonably foreseeable is that he believes that additional process must be provided to permit him to litigate a fear-based claim before removal to Cameroon may occur. See ECF No. 2 at 5-6 (arguing that “[a]ny conclusion that Mr. Chennah’s continued detention is justified by his imminent removal to Cameroon assumes the government will not comply with its due process obligations to fairly evaluate Mr. Chennah’s fear-based claim”). In other words, Petitioner’s

Zadvydas challenge is premised on the argument that removal in the reasonably foreseeable future is not likely because, Petitioner believes, certain processes must occur before removal to a third country, those processes would take time, and removal to any third country would not be allowed under those processes.

This argument fails for at least four reasons.

First, *Zadvydas* itself is silent as to what procedures Respondents must use to effectuate removal. It only concerns the length of detention and whether it has become unreasonably prolonged. *See id.*, 533 U.S. at 700-01

Second, Petitioner has received all the process he is due under existing DHS policy. For example, On June 25, 2025, the IJ granted Petitioner withholding of removal to Morocco under 8 U.S.C. § 1231(b)(3). Kinsey Decl. ¶ 12. On November 23, 2025, ICE conducted a POOCR pursuant to 8 C.F.R. § 241.4, and determined that Petitioner did not satisfy the criteria for release. *Id.* ¶ 15. On December 10, 2025, ICE conducted a personal interview with Petitioner and his attorney. *Id.* ¶ 16. On January 9, 2026, ICE notified Petitioner that he would be removed to Cameroon. *Id.* ¶ 17. Petitioner claimed fear of removal to Cameroon, and ICE referred Petitioner to USCIS for screening for eligibility for protection under 8 U.S.C. § 1231(b)(3). *Id.* ¶ 21. And on January 13-15, 2026, USCIS conducted a third-country screening interview with Petitioner, and determined that Petitioner actually established that it is more likely than not that he will be persecuted if removed to Cameroon. *Id.* ¶ 22. Accordingly, even after the Petition was filed, Petitioner continued to receive additional process regarding his removal.

Third, how much process noncitizens, like Petitioner, are due before removal to a third country is not properly raised in this case. That issue is part of the certified *D.V.D.* class action pending in the District of Massachusetts. See *D.V.D.*, 778 F. Supp. 3d 355 (D. Mass. 2025). Petitioner is a member of the *D.V.D.* class as an individual with a final order of removal who Respondents will deport to a country not previously designated as the country of removal and not identified in writing in prior proceedings. See *id.* at 378, 394; ECF No. 1 ¶¶ 29-30, 42, 78. Because Petitioner is a member of the non-optout *D.V.D.* class, he cannot challenge the adequacy of the process for third-country removal in this case.

“The key” to a non-optout class “is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (citation omitted). A class under Rule 23(b)(2) “does not require that class members be given notice and opt out rights” on the presumptive premise that “the class is mandatory” and “depriving people of their right to sue in this manner complies with the Due Process Clause.” *Id.* at 362. Therefore, class members in a Rule 23(b)(2) action “do not have the alternative of bringing a separate suit.” 21 Charles Alan Wright & Arthur R. Miller, *Fed. Practice and Procedure* § 1786 (3d ed. updated 2025) (footnote omitted).

As the Tenth Circuit has observed in the prisoner context, “[i]ndividual suits for injunctive and equitable relief ... cannot be brought where there is an existing class ac-

tion.” *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991); *see also Moore v. Hick-enlooper*, 723 F. App’x 582, 586 (10th Cir. 2018) (“We have approved a protocol that prevents individual claimants from pursuing their own equitable claims relating to a class action while the class action is proceeding.”). Similarly, the Eighth Circuit has explained:

After rendition of a final judgment, a class member is ordinarily bound by the result of a class action.... If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.

Goff v. Menke, 672 F.2d 702, 704 (8th Cir. 1982); *see also Jiaming Hu v. U.S. Dep’t of Homeland Sec.*, No. 4:17-cv-02363-AGF, 2018 WL 1251911, at *4 (E.D. Mo. Mar. 12, 2018) (“Multiple courts of appeal... have held it is not an abuse of discretion to dismiss a case on the ground that the plaintiff is a member of a parallel class action.”) (collecting cases).

Thus, as several courts, including this Court, have recognized, a *D.V.D.* class member may not pursue claims arising out of the procedures for third-country removal outside the class action. *See Sanchez v. Bondi*, 25-cv-02287-CNS, 2025 WL 2550646, at *2-3 (D. Colo. Aug. 20, 2025) (collecting cases and concluding where a petitioner is a *D.V.D.* class member and his habeas application was “premised on the absence of any notice or opportunity to apply for protection from removal” to a third country, that he had failed to show a likelihood of success on the merits of a temporary restraining order based on that application).

Because this Court cannot speculate about any potential change in third-country removal process that might result from the *D.V.D.* litigation, the question thus is whether

Petitioner's removal is likely to occur in the reasonably foreseeable future in light of the procedures ICE *currently* provides for third-country removals. Here, as explained above, ICE completed the process to identify a third country under those current procedures and commenced removal. See Kinsey Decl. ¶¶ 19-22. And it is now continuing to take steps to effectuate a lawful removal. *Id.* ¶ 23.

Finally, Petitioner's requested relief does not square with the U.S. Supreme Court's decision to stay the injunctive relief against third-country removal entered in *D.V.D.* While Petitioner's direct request in this matter is for release rather than additional process to assert a fear-based claim, see ECF No. 1 at 28; ECF No. 2 at 6, his continued custody is necessary to effectuate his removal. Granting release would thus constitute a *de facto* stay of his removal that would contravene the Supreme Court's determination that no such stay is unavailable to the *D.V.D.* class. A different result would carve out from the *D.V.D.* class a subset of noncitizens who would receive special protection from removal unavailable to other class members solely due to the length of their detention.

III. Petitioner is not entitled to a preliminary injunction.

A. Petitioner faces an elevated burden to obtain the requested relief.

A court may grant preliminary injunctive relief only after the moving party proves "(1) that she's substantially likely to succeed on the merits, (2) that she'll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party's under the injunction, and (4) that the injunction isn't adverse to the public interest." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

When a movant seeks a “disfavored injunction,” she must meet a heightened standard. *Id.* An injunction is disfavored when “(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win.” *Id.* The moving party must make a “strong showing” as to the likelihood-of-success-on-the-merits and the balance-of-harms factors to be granted a disfavored injunction. *Id.*

Petitioner seeks a disfavored injunction, as it requests an order that he be immediately released from detention—a request to change the status quo and for all the relief that could be expected from a final judgment. Petitioner thus must make a strong showing on both the likelihood-of-success and balance-of-harms factors. He cannot.

B. Petitioner is unlikely to succeed on the merits.

Petitioner’s claims fail on their merits, as discussed above. He therefore cannot establish a likelihood of success on the merits.

C. Petitioner has not established irreparable harm absent an injunction.

“To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted). The only harms Petitioner identifies are the fact that he remains in custody and has the potential to lose the chance to defend his constitutional rights in this Court. *See, e.g.*, ECF No. 2 at 3-4.

Regarding the first harm Petitioner identifies, Petitioner has not demonstrated that his ongoing detention presents an irreparable harm. Petitioner argues that each day of continued detention “in violation of his constitutional rights, he faces irreparable harm.”

ECF No. 2 at 3. But as explained above, Petitioner has not established that the continued detention under 8 U.S.C. § 1231 violates Petitioner's constitutional rights.

As for the second harm, the Court has already granted the request that Petitioner not be removed from the District of Colorado or the United States until the Court or the Tenth Circuit vacates such an order. See ECF No. 5. Thus, Petitioner does not face any potential irreparable harm of losing his opportunity to make his case in this forum.

D. Petitioner has not established that the balance of the equities weigh in favor of immediate release.

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. See, e.g., *id.* at 436. Here, Petitioner's interest in freedom from detention should be weighed against the fact that Petitioner is “subject to an order of removal from the United States.” Cf. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) (explaining that the *Matthews v. Eldridge*, 424 U.S. 319 (1976), factor for evaluating a plaintiff's private interest is diminished in due process analysis when the noncitizen was subject to a removal order). Respondents have a valid statutory and constitutional basis for detention, see 8 U.S.C. § 1231(a)(6); *Zadvydas*, 533 U.S. at 701, and Petitioner is being detained for “a period reasonably necessary to secure” removal. *Zadvydas*, 533 U.S. at 699.

Petitioner argues that the government cannot allege harm arising from having to comply with the law. ECF No. 2 at 7. But as explained above, Petitioner's detention is

lawful. And as the Supreme Court recently indicated, any time that the Government is “enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (citation omitted). Enjoining Respondents from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.¹

IV. Conditions of release

To the extent that the Court determines that Petitioner is entitled to release, the Court should specify in any order that such release must be under conditions identified by ICE. Petitioner acknowledges that any release “may be ‘conditioned on any of the various forms of supervised release that are appropriate in the circumstances.’” ECF No. 2 at 6 (citing *Zadvydas*, 533 U.S. at 700). And *Zadvydas* recognizes that a noncitizen “may no doubt be returned to custody upon a violation of those conditions.” 533 U.S. at 700.

CONCLUSION

For the reasons set forth above, the Petition should be dismissed or denied, and the Motion should be denied.

Dated: January 20, 2026.

Respectfully submitted,

¹ Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” If the Court grants Petitioner’s request for a preliminary injunction, Respondents request that the Court require appropriate security.

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CERTIFICATE OF SERVICE

I certify that on January 20, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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and I certify that on the same date I am causing the foregoing to be delivered to the following non-CM/ECF participants in the manner (mail, email, hand delivery, etc.) indicated by the nonparticipant's name:

none.

s/ Andrew M. Soler
Andrew M. Soler