IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMMANUEL BLANKSON MARFO, Petitioner, v. KEVIN RAYCRAFT, et al., Respondents.	)	CASE NO. 3:26-cv-01293 JUDGE BENITA Y. PEARSON **REPLY BRIEF**

Now come Respondents and hereby respectfully submit this Reply Brief in compliance with the Court's Order.

LAW AND ARGUMENT

I. Petitioner's Habeas Petition is Moot

On June 25, 2026, Petitioner Emmanuel Blankson Marfo was released from detention on an Order of Supervision. (*See* Release Notification, ECF No. 11-1, PageID #197.) Accordingly, his habeas petition is moot. Article III of the Constitution limits the jurisdiction of federal courts to the consideration of actual cases or controversies. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Under this requirement, "throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Id.* at 7. "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969); *see also Cooey v. Strickland*, 588 F.3d 924, 926 (6th Cir. 2009). "Mootness results when events occur during the pendency of a litigation which render the court unable to grant the requested relief." *Carras v. Williams*, 807 F.2d 1286, 1289 (6th Cir. 1986) (citations omitted).

A district court lacks jurisdiction over a petitioner's habeas claim brought pursuant to 28 U.S.C. § 2241 if the petitioner is not in government custody. *See Preito v. Gluch*, 913 F.2d 1159, 1162 (6th Cir. 1990). A petition for writ of habeas corpus "is a procedural device for subjecting executive, judicial, or private restraints on liberty to judicial scrutiny" and allows "a prisoner . . . [to] require his jailer to justify the detention under the law." *Peyton v. Rowe*, 391 U.S. 54, 58 (1968). It provides district courts with jurisdiction over habeas petitions when 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). *Wilson v. Williams*, 961 F.3d 829, 837 (6th Cir. 2020). Therefore, that individual's release from custody generally moots a habeas petition. *Lane v. Williams*, 455 U.S. 624, 632 (1982).

Narrow exceptions to this general rule exist in cases where the released petitioner can establish that he or she will suffer a future collateral consequence as a result of the detention or that the case is "capable of repetition, yet evading review." *Id.* at 632-33; *Sibron v. New York*, 392 U.S. 40, 53-54 (1968). To establish collateral consequences sufficient to avoid mootness, a petitioner must show "some concrete and continuing injury" other than the now ended expiration, *Spencer*, 523 U.S. at 7-8, and "there is a reasonable expectation or a demonstrated probability that the controversy will recur." *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006).

In *Wei-Dong Zheng v. Sessions*, No. 4:17-cv-02509, 2018 WL 2717253, at *1 (N.D. Ohio Jun 6. 2018), this Court addressed the situation where an alien was released from ICE's custody under an order of supervision. This Court ruled that "the habeas petition has become moot" and dismissed "the habeas petition for lack of subject matter jurisdiction." *Id.* at *2. Numerous other Courts have reached the same conclusion. *See e.g., Mbaye v. Price*, No. 2:11-CV-1015, 2012

WL 4364256 (S.D. Ohio Sept. 24, 2012) (dismissing petitioner's § 2241 petition where petitioner was released from detention under an order of supervision); *Garrido-Maurin v. ICE/DHS*, No. 4:17CV2515, 2018 WL 3853706, at *3 (N.D. Ohio July 26, 2018) ("Because Garrido-Maurin is no longer in the custody of the U.S. government, and has not alleged any continuing injury, there is no live case or controversy, his Petition is moot, and this Court lacks subject-matter jurisdiction over the instant matter.") *report and recommendation adopted*, No. 4:17-CV-2515, 2018 WL 3842780 (N.D. Ohio Aug. 13, 2018); *Khan v. Attorney Gen. of the United States*, No. 1:15 CV 2014, 2016 WL 4004616, at *2 (N.D. Ohio May 17, 2016) ("As Petitioner has received his requested relief by being released from custody on an order of supervision, there is no longer an active case or controversy.) *report and recommendation adopted sub nom. Khan v. Att'y Gen. of the United States*, No. 1:15 CV 2014, 2016 WL 4009885 (N.D. Ohio July 25, 2016).

In this case, Petitioner has been released on an order of supervision. He is under no collateral consequences he was not previously subject to. To the extent he seeks an injunction prohibiting the government from allegedly unlawfully detaining him in the future, his claim is not ripe because the relief he seeks "depends on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Warshak v. United States*, 532 F.3d 521, 526 (6th Cir. 2008) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)); *see also Ndiaye v. Adducci*, No. 4:19-cv-712, 2021 WL 1123874, at *1-2 (N.D. Ohio Mar. 24, 2021) (dismissing habeas petition as moot despite the fact the alien was subject to terms and conditions of release which significantly restrained his freedom and despite the fact the government might take him into custody without warning because determining whether a petitioner "is being held in violation of federal law is a fact-intensive inquiry, and an order instructing the government not to conduct a potential future detention in an illegal manner inevitably would be speculative and

merely advisory.") Accordingly, his habeas petition is moot, and it should be dismissed.

II. Petitioner's Suit Cannot Proceed Because He is a Member of the *D.V.D.* Class

In his brief, Petitioner admits that he is a member of a non-opt out class in *DVD v. U.S. Dep't of Homeland Sec.*, D. Mass. Case No. 1:25-cv-10676. (*Br. of Petitioner*, ECF No. 10 PageID #144-145.) Nevertheless, he argues that he can seek "individualized habeas relief from his current detention and from threatened removal to Sierra Leone" because it "is not the same claim" as raised by *D.V.D.* (*Id.*at 145.) This is simply wrong.

First, the claims and requested relief are the same. In *D.V.D.*, the court entered a preliminary injunction on the class's claims under the Administrative Procedure Act based on due process concerns with the Guidance. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 378 (D. Mass. 2025). The preliminary injunction required, *inter alia*, written notice of the country to which ICE seeks to remove the alien and additional opportunities to raise a fear-based claim. Specifically, the district court found that non-individualized diplomatic assurances do not satisfy due process and "offer no protection against either torture by non-state actors or chain refoulement, whereby the third country proceeds to return an individual to his country of origin." *Id.* at 390 (citing Plaintiffs' complaint discussing chain refoulement). The Court also held that the Guidance was insufficient because it did not provide sufficient notice and opportunity for class members to be heard regarding any fear of return to the third country. *Id.* These are the same claims and same relief sought by Petitioner.

Second, despite his arguments to the contrary, Petitioner cannot file an individual habeas action to *de facto* opt out of the *D.V.D.* class action. Numerous courts have reached this conclusion and have correctly dismissed these quasi-opt outs or transferred them to the District of Massachusetts to be treated as part of the *D.V.D.* litigation. *See, e.g.*, *Nolasco v. Noem*, No

GLR-25-3847, 2026 U.S. Dist. LEXIS 268, *17-18 (D. Md. Jan. 5, 2026); *Tanha v. Warden, Balt. Det. Facility*, No. JRR-25-2121, 2025 U.S. Dist. LEXIS 140142, *8 (D. Md. July 22, 2025); *Ghamelian v. Baker*, No. SAG-25-2106, 2025 U.S. Dist. LEXIS 139238, at *3, 5 (D. Md. July 22, 2025); *Phan v. DHS*, 25-2147, Minute Order (D.D.C. July 4, 2025). *I.V.I. v. Baker*, No. JKB-25-1572, 2025 U.S. Dist. LEXIS 101188, at *2 (D. Md. May 27, 2025).

In this case, allowing Petitioner's suit to proceed would be inconsistent with—and, indeed, would jeopardize—the nature and function of Rule 23(b)(2) class actions. Habeas claims brought by individual class members could result in obtaining disparate, individualized relief not afforded to the class. The resulting inconsistent judgments and standards are antithetical to the basic nature of Rule 23(b)(2), which both ensures and requires an "indivisible" result in which the class wins or loses as a whole and the entire class receives the same remedy. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 362-63 (2011); Fed. R. Civ. P. 23(c)(3) (providing that "the judgment in a class action" applies to "those whom the court finds to be class members," "[w]hether or not [the judgment is] favorable to the class"). That orderly procedural mechanism turns into an intractable morass if the exact same individuals can sue separately and obtain different, conflicting judgments on the same claims, creating the very risk of differing requirements governing class members that Rule 23(b)(2) exists to prevent. Indeed, if the class-wide judgment were not stayed, he would be a beneficiary of the decision and would be entitled to its relief. Thus, Petitioner should not be permitted to pursue an individualized remedy through this Court, and his habeas petition should be dismissed.

III. The Court Has Been Stripped of Jurisdiction Over Respondents' Efforts to Remove Petitioner to Sierra Leone

In his brief, Petitioner argues that "Respondents' jurisdictional argument fails because Petitioner does not ask this Court to review, vacate or otherwise disturb his underlying removal

order." (*Br.* ECF No. 10 PageID #148.) However, Petitioner expressly admits that he is challenging "Respondents' efforts to remove him to Sierra Leone." (*Id.*) This challenge fits squarely within the jurisdiction stripping provision contained in 8 U.S.C. § 1252(g). In its entirety, Section 1252(g) provides:

> Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

Congress spoke clearly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All-Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 of claims arising from efforts to "execute" a final order of removal by sending Petitioner to Sierra Leone.

In binding precedent, the Sixth Circuit has applied § 1252(g) to limit a district court's jurisdiction to interfere with the efforts to execute long-standing removal orders by sending aliens to a location where they did not want to go. In *Hamama v. Adducci*, 912 F.3d 869, 872 (6th Cir. 2018), Iraqi nationals had been ordered removed to Iraq. For many years Iraq had refused to repatriate them. *Id.* Because the United States was unable to execute on the removal orders, the aliens remained in the United States under orders of supervision. *Id.* After many years, things changed and Iraq began to cooperate with repatriation efforts. *Id.* When the United States began executing on the removal orders to send the aliens to Iraq, they filed a putative class action habeas petition "asking the district court to halt their removal to Iraq and to hear [their]

arguments of allegedly changed country conditions." *Id.* at 872-73. The district court concluded it had jurisdiction because of extraordinary circumstances creating an as-applied constitutional violation of the Suspension Clause and the government appealed. *Id.*

The Sixth Circuit applied § 1252(g) and found that it stripped the district court of jurisdiction over removal claims of the aliens. Specifically, the Sixth Circuit ruled "[u]nder 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." *Id.* at 874. Further, the Sixth Circuit explained that the relief sought by the aliens—a review of the country conditions where there were being removed—is not cognizable in habeas. *Id.* at 875. Because the nature of the relief they sought was not release from custody, but rather "a court order requiring the United States to shelter them[,]" their claims were not cognizable in habeas. *Id.* Rather, the Sixth Circuit held Congress "provided aliens with an alternative method to challenge the legality of removal orders: a motion to reopen followed by a petition for review filed in a court of appeals." *Id.* at 876. Based on this binding Sixth Circuit precedent, § 1252(g) strips this Court of jurisdiction to hear Petitioner's challenge to the efforts of the government to execute his removal order to send him to Sierra Leone despite any alleged conditions there.

The government notes that while a district court has jurisdiction in some cases to review the length of detention prior to removal, it has not "conceded that this Court retains jurisdiction to review the legality of Petitioner's detention." (*Br. of Petitioner*, ECF No. 10 PageID #148.) Simply put, jurisdiction to review the decision regarding where to send an alien subject to a final removal order is different than jurisdiction to review the length of time that an alien may be detained when removal is not reasonably foreseeable. The government certainly can and does

argue that § 1252(g) strips this Court of jurisdiction to review the efforts and decisions made by the government to execute the removal order.

Petitioner also argues that 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9) do not deprive this Court of jurisdiction because he challenges "the decision to remove him to Sierra Leone" rather than "the validity of the final removal order itself." (*Br. of Petitioner*, ECF No. 10 PageID # 149-150.) What Petitioner fails to acknowledge is that these sections restrict jurisdiction over more than just the validity of the final removal order. Rather. Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all* [claims arising from deportation proceedings]" to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. "Taken together, §[§] 1252(a)(5) and [(b)(9)] mean that *any* issue— whether legal or factual— arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). Section 1252(b)(9) thus eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. Accordingly, this Court lacks jurisdiction under Sections 1252(a)(5) and (b)(9) to review Petitioner's request enjoin his removal from the United States to Sierra Leone.

The court in *Agyemang v. Warden of Clinton County Correctional Facility*, No. 3:26-CV-00688, 2026 WL 1558255 (M.D. Pa. Jun. 6, 2026), faced an identical case to the one present here. In that case, a citizen of Ghana was ordered removed but the Immigration Judge withheld removal to Ghana under CAT. *Id.* at *1. The government decided to remove the alien to Sierra Leone. *Id.* The alien filed an emergency motion in district court "requesting that the Court stay his removal until ICE affords him a fear interview on removal to Sierra Leone." *Id.* at *2. The

district court held that it did not have subject-matter jurisdiction to enjoin the alien's removal to Sierra Leone. *Id.* at *3. The Court explained that § 1252(g) "strips district courts of jurisdiction to review the Attorney General's decision to execute a removal order or actions taken to execute a removal order." *Id.* Further, § 1252(b)(9) "channels claims arising from actions taken to remove a noncitizen into a petition for review of a final order of removal...." *Id.* at *4. The district court ruled that the "government's designation of Sierra Leone for [the alien's] third-country removal is so bound up with the execution of his removal order that § 1252 and § 1252(b)(9) strip the Court of subject-matter jurisdiction to enjoin removal to Sierra Leone." *Id.* at *5. This Court should follow this decision and find it lacks subject-matter jurisdiction over Petitioner's claims.

IV. Petitioner's Removal to Sierra Leone is Authorized by 8 U.S.C. § 1231(b)(2)

In his brief, Petitioner argues that the government failed to "show compliance with the statutory sequencing that must precede reliance on the catch-all willing-country provision." (*Br. of Petitioner*, ECF No. 10 PageID #153 (citing 8 U.S.C. § 1231(b)(2)(E)(vii)).) Petitioner claims that the language about removals to third countries upon which "Respondents rely is a last-resort option, not a free-floating grant of discretion to bypass the rest of the statutory scheme...." (*Id.* at PageID #152.) Further, he alleges that "Petitioner had already begun the process of removal to Canada, the country he selected, before Respondents detained him and pivoted to Sierra Leone." (*Id.*)

The parties agree that 8 U.S.C. § 1231(b)(2) provides the guidelines for determining which countries an alien like Petitioner may be removed to. Regarding these guidelines, the Supreme Court has observed that:

> The statute...provides four consecutive removal commands: (1) An alien shall be removed to the country of his choice, unless one of the conditions eliminating that

> command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen, unless one of the conditions eliminating that command is satisfied; (3) otherwise he shall be removed to one of the countries with which he has a lesser connection; or (4) if that is " impracticable, inadvisable, or impossible," he shall be removed to "another country whose government will accept the alien into that country."

Jama v. Immigr. & Customs Enf't, 543 U.S. 335, 341 (2005) (citations to subparagraphs omitted).

Here, Petitioner appears to argue that he has designated Canada as the country where he wants to be removed to pursuant to § 1231(b)(2)(A)(i). What Petitioner fails to appreciate is that he can only designate Canada if he "is a native, citizen, subject or national of, or has resided in, that designated territory...." 8 U.S.C. § 1231(b)(2)(B). Because he is neither a citizen, subject, or national of Canada nor has he provided any evidence that he resided in Canada, he cannot designate Canada under the guidelines. While nothing in the statute would prohibit Petitioner from voluntarily leaving the United States and going to Canada if it would admit him, the Attorney General cannot to remove him to Canada upon designation.

Similarly, the other options under the statute are not available. Since Petitioner entered illegally and was not admitted to the United States from another country, he cannot be removed to that country. *See* § 1231(b)(2)(E)(i). Likewise, he cannot be removed to a foreign port or foreign territory from where he left. *See* § 1231(b)(2)(E)(ii).

Finally, he cannot be removed to the country where he was born and where he claims to have previously resided. 8 U.S.C. § 1231(b)(2)(E)(iii)-(vi). According to the records before the Court, Petitioner was born and resided in Ghana before coming to the United States. (*Record of Statement*, ECF No. 7-1 PageID # 88.) However, it is impossible for the government to remove him to Ghana due to the Immigration Order withholding removal to Ghana. (*Order of the IJ*, ECF No. 5-1, PageID # 44.) Therefore, under the statute, the government is only authorized to remove Petitioner to "another country whose government will accept the alien into that country."

8 U.S.C. § 1231(b)(2)(E)(vii). Petitioner's arguments that the government did not follow the statute in deciding to remove him to Sierra Leone are wrong and not supported by the record.

Petitioner also attempts to have this Court to interject itself into the delicate diplomatic endeavor of finding third countries willing and able to accept aliens by asking this Court to consider "evidence" consisting of human rights reporting from the Department of State. (*Br. of Petitioners*, ECF No. 10 PageID # 157-159.) This is wholly outside the jurisdiction of the Court and the government urges the Court to reject this invitation. Further, it is undisputed in this case that Sierra Leone has provided diplomatic assurances that the aliens removed from the United States pursuant to the Third Country Removal agreement (including Petitioner) will not be subject to persecution or torture in Sierra Leone or in any country in which they may be transferred to by Sierra Leone. (*Cam Decl.*, ECF No. 5-2 PageID # 49 at ¶ 6.) Moreover, the Department of State determined that the diplomatic assurances were credible. (*Id.*) Thus, this Court should reject the invitation to allow Petitioner to litigate the issue in this Court.

CONCLUSION

Based on the foregoing and for the reasons set forth in their Brief in Opposition to Preliminary Injunction, Respondents respectfully request that the Court decline to issue a preliminary injunction and dismiss Petitioner's habeas petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Loc. R. 7.1(f), I certify that the foregoing Reply Brief is eleven (11) pages in length and within the page limits for an unassigned matter.

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