IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

O. E. E.M.	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 1:26-cv-1676 (AJT-IDD)
	)	
TODD BLANCHE, *et al.*,	)	
	)	
Respondents.	)	
	)	

FEDERAL RESPONDENTS' OPPOSITION TO THE PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

On June 13, 2026, Petitioner filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 alleging that he is being unlawfully detained. He is not – the Department of Homeland Security ("DHS"), through Immigration and Custom's Enforcement ("ICE"), have identified Mexico as third country removal option, and thus ICE properly revoked Petitioner's Order of Supervision ("OSUP") pursuant to 8 C.F.R. § 241.4(*l*). Petitioner has also been detained for four months pursuant to 8 U.S.C.§ 1231. He filed the instant Petition alleging that his continued detention and OSUP revocation violates the Due Process Clause. Petitioner also alleges that DHS's procedures involving third country removal violate due process. Finally, Petitioner also alleges that DHS's procedures involving third country removal violate due process. Finally, the Petitioner claims that DHS actions will prevent him from accessing asylum relief recently made available by the vacatur of the Credible Lawful Pathways Rule. *See* East Bay Sanctuary Covenant v. Trump, No. 4:18-cv-06810-JST, ECF No. 226 (N.D. Cal. May 7, 2026).

This Court should deny the Petition. *First*, the revocation of Petitioner's OSUP satisfies the Fifth Amendment's requirement of receiving notice and an opportunity to be heard. Petitioner received notice of such revocation and an informal interview to respond to the revocation. *Second*, with respect to Petitioner's pure detention claim, under Supreme Court precedent and this Court's interpretation of that precedent, Petitioner's detention is lawful because he has not been detained subject to a final order of removal for longer than six months. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Moreover, even if this Court were to look beyond the presumption of reasonable detention set forth in *Zadvydas*, Plaintiff cannot meet his burden of showing that his removal from the United States is not significantly likely to occur in the reasonably foreseeable future. Petitioner fails to provide any evidence that his removable is not foreseeable. And as Federal Respondents' note

infra, ICE is ready to effectuate Petitioner's removal to Mexico. *Finally*, DHS's Guidance on Third Country Removal provides appropriate due process. Petitioner received notice of his removal to a third country, claimed fear of removal, and had an asylum officer adjudicate his claim of fear. Neither the INA nor its implementing regulations allow an alien seeking withholding of removal from a third country pursuant to 8 U.S.C. § 1231(b)(3)(A) to appeal a USCIS's asylum officer's negative persecution screening to an IJ.

Therefore, the Federal Respondents respectfully request this Court decline to issue a Writ of Habeas Corpus and dismiss the Petition.

LEGAL BACKGROUND

A. Detention Under 8 U.S.C. § 1231

In general, when an alien is ordered removed, the INA provides the United States with ninety (90) days to execute the removal. 8 U.S.C. § 1231(a)(1)(A). This "removal period" begins to run on the latest of three dates. See id. § 1231(a)(1)(B). During the removal period, the Attorney General is required to detain certain criminal aliens. *See id.* § 1231(a)(2)(A). Moreover, the detention of certain aliens, including inadmissible aliens like Petitioner, may be continued beyond the initial ninety (90) days, or the alien may be released. *Id.* § 1231(a)(6); 8 C.F.R. §§ 241.4(a), (d)(1). If an alien is released from custody, he may be subject to an order of supervised release. See 8 C.F.R. § 241.4(a). ICE may choose to revoke such release in two instances: (1) if the alien violates the terms of his order of supervisor, see 8 C.F.R. § 241.4(*l*)(1), or (2) the Executive Associate Commissioner of ICE or a district director, in their ultimate *discretion*, finds that "revocation is in the public interest." 8 C.F.R. § 241.4(*l*)(2).

B. Relief from Removal

The INA makes clear that alien may not be removed to a country where "the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3)(A). An alien can seek such relief in the form of applying for asylum, withholding of removal through the INA, withholding of removal through CAT, or deferral of removal through CAT. *See id.* § 1158 (asylum); 8 C.F.R. §§ 208.16(b), 1208.16 (withholding of removal under the INA); §§ 208.16(c), 1208.16(c) (withholding of removal under CAT); §§ 208.17, 1208.17 (deferral or removal under CAT) (emphasis added).[1] Such relief may be adjudicated by a U.S. Citizenship and Immigration Services ("USCIS") asylum officer or an Immigration Judge ("IJ"), both of whom are Executive Branch officials. *See* 8 C.F.R. §§ 208.1(a)(1); 1208.1(a)(1). USCIS asylum officers "receive special training in international human rights law, non[-]adversarial interview techniques, and other relevant national and international refugee laws and principles." *Id.* § 208.1(b).

Although a final order of removal typically identifies a particular country to which the alien is to be removed (and/or, alternatively, a particular country to which the alien *cannot* be removed as a result of the above statutory and regulatory provisions), "[a]fter immigration court proceedings have ended, 'DHS retains the authority to remove the alien to any other country authorized by the statute.'" *Ibarra-Perez v. United States*, 154 F.4th 989, 995 (9th Cir. 2025) (quoting *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021)). If DHS "is unable to remove the alien to the specified

[1] Both the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR"), as a part of the Department of Justice ("DOJ"), have promulgated regulations to carry out the various sections of the INA, which are similarly worded in nature. *See* 8 C.F.R. ch. I (DHS), ch.V (EOIR/DOJ). In their argument, Federal Respondents will mostly cite from DHS's regulations as Petitioner's removal proceedings have concluded and it is DHS that is responsible for executing his final removal order.

or alternative country or countries, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [§ 1231(b)]." *Id.* (quoting 8 C.F.R. § 1240.12(d)); *see also* 8 C.F.R. §§ 241.15, 208.16(f), 1208.16(f). It is thus important to provide a short precis of the types of "withholding" relief that would preclude DHS from removing an alien to *a* particular country.

1. Withholding of Removal under the INA

To seek withholding of removal *under the INA*, an alien "must establish that if [he] is removed, there is a *clear probability* that [his] 'life or freedom would be threatened . . . because of his race, religion, nationality, membership in a particular social group, or political opinion.'" *Marynenka v. Holder*, 592 F.3d 594, 600 (4th Cir. 2010) (quoting 8 U.S.C. § 1231(b)(3)(A)) (emphasis added); *see* 8 C.F.R. §§ 208.16(b). Credibility determinations and whether an alien has sustained his burden of proof are conducted in the manner described in 8 U.S.C. §§ 1158(b)(1)(B)(ii), (ii), which governs asylum. *See* 8 U.S.C. § 1231(b)(3)(C); 8 C.F.R. § 208.16(b). However, federal immigration authorities are mandatorily precluded from affording such relief in certain circumstances, such as when the alien was convicted "of a particularly serious crime" such that he "is a danger to the community of the United States." 8 U.S.C. § 1231(b)(3)(B); *see also* 8 C.F.R. §§ 208.16(d)(2), (3).

2. Withholding of Removal and Deferral of Removal under CAT

Congress implemented CAT through the Foreign Affairs Reform and Restructuring Act ("FARRA") of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-821, which required the federal government to establish regulations to carry out the treaty. Such regulations were promulgated and codified at 8 C.F.R. §§ 208.16(c), 1208.16(c) (withholding of removal); §§ 208.17, 1208.17 (deferral of removal). To obtain withholding of removal *pursuant to CAT*, an alien "must show

that it is '*more likely than not* that he or she would be tortured if removed to the proposed country of removal.'" *Marynenka*, 592 F.3d at 600; *see* 8 C.F.R. §§ 208.16(c)(2); 1208.16(c)(1). Like withholding of removal under the INA, withholding of removal under CAT is also subject to mandatory denials. *See* 8 C.F.R. §§ 208.16(d)(2)-(3), 1208.16(d)(2)-(3). An alien's relief, however, does not stop there. Any alien who has been (1) ordered removed, (2) found to be entitled to protection under CAT, and (3) subject to any of the mandatory denial of withholding of removal provisions in either 8 C.F.R. § 208.16(d)(2)-(3) or § 1208.16(d)(2)-(3), "shall be granted deferral of removal to the country where he or she is more likely than not to be tortured." *Id.* §§ 208.17(a), 1208.17(a).

CAT relief does *not* "alter the authority of the Service to detain an alien whose removal has been deferred under this section and who is otherwise subject to detention." *Id.* §§ 208.17(c), 1208.17(c). If an alien is granted withholding of removal or CAT relief, he or she still may be removed to a country where the "government [] will accept the alien into the country's territory." 8 U.S.C. § 1231(b)(1)(C). And importantly, the decision to remove an alien to another country other than his native-born country is within the discretion of the DHS Secretary. *See* 8 C.F.R. §§ 241.15, 1241.15.

C. Removal to Third Countries

An alien facing removal is first entitled to select a country where he may be removed. *Id.* § 1231(b)(2)(A). However, such entitlement is not guaranteed. *See id.* §§ 1231(a)(2)(C), (D), (E). For instance, the Attorney General may disregard an alien's selection if "the alien fails to designate a country promptly." *Id.* § 1231(b)(2)(C)(i). If an alien is not removed under § 1231(b)(2)(A), "the Attorney General shall remove the alien to a country of which the alien is a subject, national, or citizen[,]" *id.* § 1231(b)(2)(D), absent certain conditions. *See id.* §§ 1231(b)(2)(D)(i), (ii); §

1231(b)(3)(A). As the Supreme Court in *Jama* said best, "[t]he [INA] [] provides four consecutive removal commands:

> (1) An alien shall be removed to the *country of his choice* (subparagraphs (A) to (C)), 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 (subparagraph (D)), 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 (clauses (i) to (vi) of subparagraph (E)); 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' (clause (vii) of subparagraph (E))."

Jama v. ICE, 543 U.S. 335, 341 (2005) (emphasis added).

If an alien is not removed pursuant to § 1231(b)(2)(A) or § 1231(b)(2)(D), he may be removed to a third country. *See id.* ¶ 1231(b)(2)(E). Significantly here, "acceptance is *not required* to remove an alien to a" third country. 8 C.F.R. § 241.15(e) (emphasis added); *see also Jama*, 543 U.S. at 351 (quoting *United States v. Powell*, 379 U.S. 48, 55 n.13 (1964)) ("the acceptance requirement is 'neither a settled judicial construction nor one which we would be justified in presuming Congress, by its silence, impliedly approved.'"). In the case of an alien who declines designating a country of removal, a country selection is made by DHS, either while the alien is in removal proceedings or once an alien has a final order of removal—and remains within the discretion of DHS. *See id.* §§ 241.15 (countries to which aliens may be removed); 1241.15 (stripping IJs and the BIA jurisdiction to review country selections).

D. Relief from Removal to Third Countries

Relief from removal is available as to third countries as well as the alien's home country. If the United States has not received diplomatic assurances that an alien would not be persecuted

or tortured, aliens may seek relief from removal to any country where removal is imminent. 8 U.S.C. § 1231(b)(3)(A). As the INA clearly states:

> the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

Id.[2] On March 30, 2025, DHS issued a memorandum entitled *Guidance Regarding Third Country Removals*. *See* Federal Respondents' Exhibit ("FREX") 1, *Guidance Regarding Third Country* Removal, DHS (Mar. 30, 2025) (hereinafter, the "March Guidance"). The March Guidance provides that aliens may be removed to a "country [that] had provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." *Id.* If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures." *Id.*

If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of the intent to remove him to that country and then give him an opportunity to establish that he fears removal there. *See id.* If the alien affirmatively states a fear, trained asylum officers from USCIS will screen the alien, generally within twenty-four (24) hours, to determine whether he "would more likely than not" be persecuted on a statutorily protected ground or tortured in the country of removal. *Id.* at 2. If the alien *meets* this standard, the alien will be referred to the IJ in the first instance, or if previously in proceedings before an IJ, USCIS will notify ICE to file a motion to reopen those proceedings, as appropriate, for the sole purpose of determining eligibility for protection under § 1241(b)(3) and CAT,

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[2] On April 18, 2025, a district court issued a nationwide injunction that provided aliens who were subject to removal to a third country certain due process rights. *See D.V.D. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025). On July 3, 2025, the Supreme Court *stayed* the injunction in full. *DHS v. D.V.D.*, --- S. Ct. ---, 2025 WL 1832186, at *1 (U.S. July 3, 2025) (emphasis added).

specifically to the newly designated country of removal. *Id.* Alternatively, ICE may choose another country for removal, subject to the same processes. *Id.* If the USCIS asylum officer determines that such alien is not "more likely than not" be persecuted or tortured, the alien is notified and may be removed to such country. *Id.* However, pursuant to regulations, an alien may move to reopen his proceedings to allow an IJ to review his third country fear screening. *See* 8 C.F.R. § 1003.23(b)(4)(i). And pursuant to the same regulation, Petitioner may seek a stay of removal while his motion to reopen is pending. *See id.*

FACTUAL BACKGROUND

Petitioner entered the United States without inspection on October 2, 2023, and was encountered by Border Patrol. *See* FREX 2, Record of Deportable/Inadmissible Alien, pg. 2. It was determined that the Petitioner was not a citizen or resident of the United States and he was arrested and processed for Expedited Removal with Credible Fear. *Id.* at pg. 3. On December 18, 2023, Petitioner was issued a Notice to Appear and released on Order of Release on Recognizance (OREC). *Id.* On January 19, 2025, IJ denied Petitioners application for asylum, finding that the Petitioner was barred by the CLP rule and granted withholding of removal. *See* FREX 3, Removal Order. Petitioner was released on OSUP. *See* FREX 2. Petitioner was arrested on April 10, 2026, in Loudon County, Virginia and charged with Strangulation Another Causing Wounding or Injury (Felony 18.2-51.6). *See* FREX 4, Virginia Judiciary Online Case Info System. On May 15, 2026, the charges were entered nolle prosequi. *Id.* On May 16, 2026, the Petitioner was taken into ICE custody and issued a Notice of Removal to Mexico. *See* FREX 5, Notice of Removal. On June 26, 2026, Petitioner filed a motion for Stay of Removal and a Motion to Reconsider with the immigration court based on the vacatur of the CLP rule. The IJ granted the motion for Stay of Removal on July 9, 2026. The IJ denied the Petitioner's Motion to Reconsider on August 12, 2026.

See FREX 6, Order-Motion for Consideration. The Petitioner has appealed the court's denial of his Motion to Reconsider, and the matter is pending before the Board of Immigration Appeals.

ARGUMENT

I. This Court Lacks Jurisdiction Over Petitioner's Third Country Claims

A. The relief relating to third country removal is not available in a habeas petition.

This Court lacks jurisdiction to order *IJ review* of the negative third country screening interview because this relief is not cognizable in this habeas proceeding. The relief Petitioner seeks—specific performance ordering IJ review of his third-country removal screening determination, or an order enjoining the DHS from removing him pursuant to a lawful reinstatement removal order unless and until an IJ reviews a screening determination – is not cognizable here because habeas jurisdiction only extends to review the legal propriety of Petitioner's *current detention*. *See DHS v. Thuraissigiam*, 591 U.S. 103, 104, 116–20 (2020) ("Respondent does not seek release from custody, but an additional opportunity to obtain asylum. His claims therefore fall outside the scope of the writ [of habeas corpus] as it existed when the Constitution was adopted.").

"[H]abeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("in each case [a petitioner's] grievance is that he is being unlawfully subjected to physical restraint, and in each case habeas corpus has been accepted as the specific instrument to obtain release from such confinement.") (emphasis added) (footnote omitted); *see also Toure v. Hott*, 458 F. Supp. 3d 387, 397 (E.D. Va. 2020) ("If habeas jurisdiction applied here, the rationale for the writ would be undercut because a foundational requirement—

that the complained-of custody be unlawful—would be eliminated."). For this reason, as the Supreme Court held, "the great and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention." *Walker v. Wainwright*, 390 U.S. 335, 337 (1968).

However, "immediate physical release [is not] the only remedy under the federal writ ofhabeas corpus." *Peyton v. Rowe*, 391 U.S. 54, 67 (1968); *In re Bonner*, 151 U.S. 242, 254, 259 (1894)). A detainee may also challenge the conditions of his detention or the execution of his sentence in habeas proceedings. *See e.g.*, *Lumumba v. Kiser*, 116 F.4th 269, 277 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 1189 (2025) (good-conduct sentencing credits are cognizable on federal habeas); *Popoola v. Scales*, No. 3:25CV390 (DJN), 2025 WL 3473370, at *7 (E.D. Va. Dec. 3, 2025) (finding a claim challenging a petitioner's removal from a halfway house back to a prison appropriately raised in a writ for a petition of habeas corpus). For example, in *Nance v. Ward*, the Supreme Court explained that a capital prisoner may seek "to overturn his death sentence" in habeas by "analog[y]" to seeking release. 597 U.S. 159, 167 (2022). The D.C. Circuit determined that a detainee not seeking immediate release could nonetheless challenge the computation of good time credits in habeas proceedings. *Chatman–Bey v. Thornburgh*, 864 F.2d 804 (D.C.Cir.1988) (en banc). Transfer between detention facilities may also be challenged in a writ for a petition of habeas corpus. *See, e.g.*, *Kiyemba v. Obama*, 561 F.3d 509, 513–14 (D.C. Cir. 2009).

The Courts have also allowed habeas challenges wherein habeas was the only cause of action available to challenge deportation under the immigration statutes that precluded review beyond what was necessary to vindicate due process rights. *Heikkila v. Barber*, 345 U.S. 229, 234–235 (1953). Claims that "'necessarily imply the invalidity'" of an alien's confinement and removal also fall within the "core" of the writ of habeas corpus and thus may be brought in habeas. *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025). However, those claims have two commonalities: (1) the

litigants are challenging the conditions of their current detention, whether the lawfulness of their confinement or the conditions of their detention; and (2) habeas was the only cause of action available, given the particular legal authority for their detention. *See, e.g.*, id. at 674 (noting, regarding a challenge to the transfer of detainees under the Alien Enemies Act, "habeas corpus has been the proper vehicle for detainees to bring claims seeking to bar their transfers."); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (aliens detained as enemy combatants at Naval Station at Guantanamo Bay were entitled to privilege of habeas corpus to challenge legality of their detention and seek their release in the face of indefinite detention); *but see J. G. G.*, 604 U.S. at 686 (dissent noting, "this Court has never 'recognized habeas as the sole remedy, or even an available one, where the relief sought would 'neither terminate custody, accelerate the future date of release from custody, nor reduce the level of custody'") (citing *Skinner v. Switzer*, 562 U.S. 521, 534 (2011)).

Crucial to this petition, the Supreme Court has clarified that the scope of habeas cannot be extended to claims that are ultimately seeking "the opportunity to remain lawfully in the United States. *Thuraissigiam*, 591 U.S. at 119-20; *see also Castro v. U.S. Dep't of Homeland Security*, 835 F.3d 422, 450–451 (3d Cir. 2016) (Hardiman, J., concurring dubitante) ("Petitioners here seek to alter their status in the United States in the hope of *avoiding* release to their homelands. That prayer for relief ... dooms the merits of their Suspension Clause argument"). In *Thuraissigiam*, the Supreme Court surveyed various sources, from Blackstone's Commentaries of 1768 to contemporaneous jurisprudence, and determined that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Id.* (citing *Preiser*, 411 U.S. at 484; *Wilkinson v. Dotson*, 544 U.S. 74, 79 (2005); *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). In *Thuraissigiam*, the petitioner was seeking almost identical relief to that sought by Bojorquez here, albeit in the context

of an expedited removal order, as opposed to a third-country screening determination: an order directing an IJ to review the DHS's order of removal. *Id.* at 116-20. Also, much like in this case – where IJ review will not necessarily result in Petitioner's release – the Court noted that Thuraissigiam "would remain subject to arrest, detention, and removal" even if IJ review were ordered. *Id.* These conditions, the Supreme Court opined, left Thuraissigiam's request for relief outside of the scope of a writ of habeas corpus. *Id.* As Petitioner makes almost an identical request in his own habeas petition, this Court need decide the constitutionality of such claims.

The Supreme Court did not narrow the scope of its *Thuraissigiam* decision to expedited removal; rather, it clarified that the scope of habeas review simply does not extend to claims seeking collateral review without an accompanying attack on the legality or conditions of the detention itself. *Thuraissigiam*, 591 U.S. at 116-20 (explaining the scope and limitations of the Suspension Clause and a writ of habeas corpus). Indeed, just as IJ review would not have been determinative of the legality of Thuraissigiam's detention, IJ review of Petitioner's negative fear screening is similarly irrelevant to the lawfulness of Petitioner's detention, which would be unaffected even if the IJ found he could not be removed to Mexico.

This Court should also find Petitioner's citations to recent district court decisions unavailing. Almost all of his cited district court habeas cases also involved prayers for immediate release from detention. *See Sagastizado v. Noem*, No. 5:25-CV-00104, 2025 WL 2957002, at *3 (S.D. Tex. Oct. 2, 2025) (granting habeas petition on grounds that Petitioner's detention will be excessively long, assuming his *separate* due process complaint is granted); *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at *1—2 (D. Md. Aug. 25, 2025) (granting release because Santamaria's re-detention was not lawful); *Y.T.D. v. Andrews*, No. 1:25-CV-01100 JLT SKO, 2025 WL 2675760, at *5 (E.D. Cal. Sept. 18, 2025) (Petitioner sought immediate release

from custody). Furthermore, neither *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025), nor *Cruz Medina v. Noem*, No. 25-CV-1768-ABA, 2025 WL 2841488 (D. Md. Oct. 7, 2025) conducted a fulsome analysis of whether a request for IJ review may be satisfied pursuant to 28 U.S.C. § 2241. In *Ortega*, the district court merely cites *Preiser* for the general proposition that "habeas corpus relief is not limited to immediate release from illegal custody," without so much as mentioning *Thuraissigiam* or any of the many cases that discuss the scope and limitations of habeas proceedings. *Ortega*, 2025 WL 2243616, at *3 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973)). Meanwhile, *Cruz-Medina* does not address the scope of 28 U.S.C. § 2241 at all, and it is not clear that the issue was even raised before the Court. 2025 WL 2841488, at *1. Thus, because these sources are not binding on this Court, do not conduct a thorough analysis of the issue, and are contrary to Supreme Court precedent, this Court should find them unpersuasive.

Finally, this Court should not heed Petitioner's attempt to shoehorn his claim into the All Writs Act. The All Writs Act is not available to cure the perceived defect in his habeas claim because the District Court explicitly lacks jurisdiction to hear his challenge to the agency's decision to execute a third country removal. 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. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under § 2241, as well as review pursuant to the All Writs Act and APA, of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. AAADC*, 525 U.S. 471, 482 (1999); *see also United States v. Texas*, 599 U.S. 670, 680 (2023) ("In light of inevitable resource constraints and regularly changing public-

safety and public-welfare needs, the Executive Branch must balance many factors when devising arrest and prosecution polices. That complicated balancing process in turn leaves courts without meaningful standards for assessing those policies); *Suri v. Trump*, 2025 WL 1806692, at *8 (4th Cir. 2025). Thus, given that Congress explicitly stripped the District Court of jurisdiction to prevent the DHS's execution of a lawful removal order, this Court should not circumvent Congressional intent by permitting the use of the All Writs Act.

Therefore, this Court lacks jurisdiction over Petitioner's third country removal claims.

B. Congress stripped this Court of jurisdiction to exercise judicial review over DHS's third country removal procedures.

In 1996, Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), a statute that "significantly restructur[ed] the scope of judicial review of immigration decisions." *Humphries v. Various Fed. USINS Employees*, 164 F.3d 936, 941 (5th Cir. 1999); *see also Hatami v. Ridge*, 270 F. Supp. 2d 763, 767 (E.D. Va. 2003). The IIRIRA provisions at issue here divest the district courts of jurisdiction to review particular immigration actions or decisions. And through the REAL ID Act of 2005, *see* Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Congress unequivocally clarified the sweeping nature of its decision to preclude district court jurisdiction over claims seeking to challenge certain Executive Branch decisions in the immigration context.

Emblematic of this "jurisdictional-channeling" – and that which divests this Court of jurisdiction over each of plaintiff's instant claims – is 8 U.S.C. § 1252(g), which provides as follows:

> 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.

8 U.S.C. § 1252(g) (emphasis added). As the Supreme Court has held, Congress promulgated § 1252(g) in order "to give some measure of protection" from litigation stemming from the specific decisions referenced in the statutory language. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 (1999) ("*AADC*"); *see also Hatami*, 270 F. Supp. 2d at 767. Put simply, though this section "does not sweep broadly," *Tazu v. Atty. Gen.*, 975 F.3d 292, 296 (3d Cir. 2020), its "narrow sweep is firm," *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). Except as provided by § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *Id.*

Each of Petitioner's "claim[s]" undoubtedly "aris[e] from the decision . . . to . . . *execute* [a] removal order," 8 U.S.C. § 1252(g) (emphasis added); indeed, Petitioner *precisely* asks this Court to prevent federal immigration officials from executing his removal order. Circuit courts, including the Fourth Circuit, have held § 1252(g) applies to the discretionary decision to execute a removal order. *Loera Arellano v. Barr*, 785 F. App'x 195 (4th Cir. 2019); *see also Tazu*, 975 F.3d at 297–99 ("The plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda*, 55 F.4th at 777–78 ("No matter how [petitioner] frames it, his challenge is to the Attorney General's exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review."); *E.F.L.*, 986 F.3d at 964–65 (holding that § 1252(g) barred review of the decision to execute a removal order while an individual sought administrative relief); *Camerena v. Director, ICE*, 988 F.3d 1268, 1272, 1274 (11th Cir. 2021) (holding that § 1252(g) bars review of challenges to the discretionary decision execute a removal order); *Arce v. U.S.*, 899 F.3d 796, 800 (9th Cir. 2018) (finding that § 1252(g) would bar claims asking the Attorney General to delay the execution of a removal order); *Hamama v. Homan*, 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.").

Therefore, the INA bars review of Petitioner's third country removal claims, and this Court should dismiss such claims from the Petition.

C. **Because Petitioner is a member of *D.V.D.*'s certified Rule 23(b)(2) class, he cannot seek the relief sought in this District.**

Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who ICE plans to remove to a third country. Because Petitioner is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide injunction, which the Supreme Court has stayed finding that the Government is likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Given that dismissal is the appropriate remedy, Petitioner is not entitled to the relief sought in the Petition for Writ of Habeas Corpus.

As explained above, the District of Massachusetts entered a preliminary injunction prescribing the process to which *D.V.D.* class members were entitled before removal to a third country and certified a non-opt out class of which Petitioner is undisputedly a member. *See D.V.D.*, 778 F. Supp. 3d 355. Such 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) 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., 778 F. Supp. 3d at 378. The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims and the Government would ultimately prevail.

First, this Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, the Petition challenges how Respondents should implement Petitioner's third country removal. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts. *See D.V.D.*, 778 F. Supp. 3d at 386 (finding petitioners satisfied Fed. R. Civ. P. 23(b)(2)).

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Defendants are likely to succeed on the legal arguments presented in response to the instant habeas petition. Allowing Petitioner's habeas petition to proceed on the ground that ICE allegedly failed

to follow the procedures set forth in the *D.V.D.* preliminary injunction in executing his removal to a third country and continuing to stay his removal to a third country would therefore be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* As a result, this Court should not require Respondents to provide the degree of process described in the *D.V.D.* preliminary injunction before removing Petitioner to a third country because the Supreme Court will, by all indications, eventually hold that such process is not required under the law.

Additionally, courts recognize that members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v. Vilsack*, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). The Fourth Circuit has observed that at least four Courts of Appeals have affirmatively held, in the prisoner context, that "it is error to allow a prisoner to prosecute a separate action once his class has been certified." *Horns v. Whalen*, 922 F.2d 835, 835 (4th Cir. 1991) (table op.) (finding district court did not abuse discretion when it declined to decide an issue that overlapped with a class action "to avoid the risk of inconsistent adjudications). *See also id.* at n.4 (collecting district court cases).

This Court should decline to exercise jurisdiction over the Petition as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim he pursues here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has

already been filed in another district."). *See also, e.g.*, *Goff*, 672 F.2d at 704; *Horns*, 922 F.2d at 835; *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (individual suits for injunctive and declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (duplicative suits should be dismissed once class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (class member should not be permitted to pursue individual lawsuit seeking equitable relief within subject matter of class action).

Thus, dismissal is warranted.

II. USCIS's March Guidance Regarding Third Country Removals satisfies Petitioner's Due Process Rights.

Petitioner alleges that before he can be removed to third country, he must receive notice and an opportunity to be heard regarding his fear of being removed to such third country. See Pet., Count Two. But Petitioner *did* receive notice and opportunity to be heard: Petitioner did receive a notice of DHS's intention to exercise its discretion, *see* 8 C.F.R. § 241.15, to remove him to a third country, be given the opportunity to claim fear of removal to such country, and have such claim of fear be adjudicated by a highly-trained asylum officer. *See* Petitioner's Writ for Habeas Corpus, pg 3.

A. Nothing in the INA or its implementing regulations require Petitioner's third country withholding of removal screening be reviewed by an IJ.

Aliens, such as Petitioner, who have not effected a lawful entry into the United States, are only entitled to due process in the form that Congress prescribed through the INA would only be afforded the due process rights that the INA prescribes. *See Thuraissigiam*, 591 U.S. at 140. Other jurists of this Court long applied this straightforward rule to hold that aliens "'on the threshold of

initial entry' are entitled only to 'the procedure authorized by Congress'" even as concerns detention. *Hong v. United States*, 244 F. Supp. 2d 627, 634 (E.D. Va. Feb. 13, 2003) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953)) (denying habeas petition to compel bond hearing for legal permanent resident stopped at the border); *see Aslanturk v. Hott*, 459 F. Supp. 3d 681, 692-94 (E.D. Va. 2020) ("[T]he due process rights afforded to Petitioner as an arriving alien are not those of the 'traditional standards of fairness encompassed in due process of law[,]' but rather, Petitioner's due process rights flow from those prescribed by Congress." (quoting *Mezei*, 345 U.S. at 212)); *see also Bukhari v. Piedmont Reg'l Jail Auth.*, 2010 WL 3385179, at *4-5 (E.D. Va. Aug. 20, 2010) ("aliens standing on the threshold of entry are not entitled to the constitutional protections provided to those within the territorial jurisdiction of the United States." (citation omitted)).

Here, neither the INA nor its implementing regulations allow an alien seeking withholding of removal from a third country pursuant to 8 U.S.C. § 1231(b)(3)(A) to appeal a USCIS's asylum officer's negative persecution screening to an IJ. The regulations to which Petitioner cites, and that other courts have used as a guideline to provide aliens like Petitioner with review of their third country removal screening by an IJ, *see Cruz-Medina*, 2025 WL 2841488, at *7; *Santamaria Orellana*, 2025 WL 2841886, at *9-10; *Sanchez*, 2025 WL 2957002, at *10, explicitly state when those regulations should and can be used – after a "credible fear" or "reasonable fear" interview. *See* 8 C.F.R. §§ 208.30, 1208.30 (credible fear); §§ 208.31, 1208.31 (reasonable fear). And because Petitioner cannot seek a credible fear or reasonable fear interview under the governing statutes and regulations, they are inapplicable to him.

As an initial matter, the applicable statutes at issue here are 8 U.S.C. § 1231(b)(3)(A) and FARRA, meaning Petitioner was screened for withholding of removal under the INA, withholding

of removal under CAT, and deferral of removal under CAT. *See* 8 C.F.R. §§ 208.16, 208.17. These regulations are *silent* as to whether review by an IJ is warranted. *See id.* (emphasis added). Indeed, Petitioner was screened pursuant to the regulations issued by DHS (and not EOIR) because Petitioner's removal proceedings concluded, and Petitioner is in the *removal period* (*i.e.*, the period of time allotted for DHS to remove Petitioner) specified in 8 U.S.C. § 1231(a)(1)(B). *See Semedo v. Mukasey*, 2008 WL 5483028, at *2 (W.D. La. Dec. 5, 2008), *aff'd*, 367 F. App'x 516 (5th Cir. 2010) ("When removal proceedings end, the removal period begins") (emphasis added); *see also supra* n.1 (explaining DHS and EOIR published their own regulations).

Petitioner is also not entitled to the rights aliens have who receive credible fear or reasonable fear screenings. Credible fear screenings, as provided in 8 C.F.R. § 208.30, explicitly apply *only* to: (a) arriving aliens who are in expedited removal proceedings under 8 U.S.C. § 1225(b)(1); and (b) alien stowaways under 8 U.S.C. § 1225(a)(2). *See* 8 C.F.R. § 208.30(a) ("[t]he provisions of this subpart [] apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the [INA], [8 U.S.C. §§ 1225(a)(2), (b)(1)]"). Petitioner is certainly not in expedited removal proceedings now (and was not in expedited removal proceedings initially) nor is he defined as a stowaway under the INA. *See* FREX 2; *see also* 8 U.S.C. § 1101(a)(49) (defining "stowaway"); 8 C.F.R. § 235.3(b) (explaining the expedited removal process); *DHS v. Thuraissigiam*, 591 U.S. 103 109-10 (2020) (same). Therefore, Petitioner is not subject to credible fear screening pursuant to 8 C.F.R. § 208.30.

Reasonable fear screenings, as provided in 8 C.F.R. § 208.31, only apply to: (a) aliens who are ordered removed pursuant to 8 U.S.C. § 1228(b), which concerns those who are not permanent residents *and* have been convicted of an aggravated felony; and (b) aliens who are subject to reinstated order of removal under 8 U.S.C. § 1231(a)(5). *See* 8 C.F.R. § 208.31(a) ("[t]his section

shall apply to any alien ordered removed under section 238(b) of the [INA] [8 U.S.C. § 1228(b)] or whose deportation, exclusion, or removal order is reinstated under section 241(a)(5) of the [INA] [8 U.S.C. § 1231(a)(5)]"). The Petitioner does not fall into either of these categories.

Further, § 208.30 credible fear screenings and § 208.31 reasonable fear screenings are inapplicable to Petitioner's claims. Significantly, USCIS asylum officers use the "*it is more likely than not*" standard that he or she will be persecuted on account of a protected ground or tortured in such third country. The regulations addressing credible fear screenings, *see* 8 C.F.R. § 208.30, and reasonable fear screenings, *see id.* § 208.31, do not use the "more likely than not" standard; instead, §§ 208.30 and 208.31 use a "significant possibility" and "reasonable possibility" standard, respectively. *See* 8 C.F.R. §§ 208.30(e) ("significant possibility"), 208.31(c) ("reasonable possibility"). And the Fourth Circuit confirms that such "more likely than not" standard is different than the "significant possibility" and "reasonable possibility" standard. *See Tomas-Ramos v. Garland*, 24 F.4th 973, 978 n.2 (4th Cir. 2022) ("The 'reasonable possibility' standard is lower than the "clear probability" standard required to establish eligibility for withholding of removal, but higher than the standard required to establish a "credible fear" of persecution in expedited removal proceedings[.]") (internal citations omitted). Because the standards are different, those regulations cannot be applied during these third-country removal scenarios.

Therefore, this Court should not provide the Petitioner with the right to have his third country removal screening heard in front of an IJ pursuant to the credible fear and reasonable fear screenings regulations found at 8 C.F.R. §§ 208.30, 208.31.

B. No additional process is warranted.

The discussion above establishes, beyond reasonable dispute, that Petitioner's due process rights have been satisfied. In the event this Court finds more process may be due, Federal

Respondents contend that such due process analysis favors Federal Respondents. Thus, Petitioner's claim that due process entitles them to something more must fail.

As a general matter, "when the government deprives a person of a protected liberty or property interest, it is obliged to provide 'notice and opportunity for hearing appropriate to the nature of the case.'" *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (195)). "[D]ue process requires, at a minimum, that the [government] adopt procedures to ensure that [aliens] are accorded an opportunity to be heard at a meaningful time and in a meaningful manner[.]" *Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002) (citing *Jacinto v. INS*, 208 F.3d 725, 727 (4th Cir. 2000)); *see Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In immigration matters, such notice and opportunity to be heard "might well be unacceptable in other proceedings." *Mathews v. Diaz*, 426 U.S. 67, 79-80, 96 (1976).

The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when the Executive Branch determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702-03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"),. As now- Justice Kavanaugh explained in concurrence in *Kiyemba*, the "*Munaf* decision applies here a fortiori: That case involved the transfer of *American Citizens*, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States". *Kiyemba*, 561 F.3d at 517-18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess

[that] assessment," unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6.[3]

Lest there be any doubt about whether the March Guidance and the procedures described therein and provided to Petitioner withstand legal and constitutional scrutiny, the Supreme Court resolved that doubt when it vacated a stay entered by United States District Court for the District of Massachusetts in *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025), *clarified by* 145 S. Ct. 2627 (2025). "[W]hen [the Supreme] Court issues a decision, it constitutes a precedent that commands respect." *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, 606 U.S. ---, 145 S. Ct. 2658, 2263 (2005) (Gorsuch, J., concurring in part and dissenting in part). This includes stay decisions, which "squarely control[]" in "like cases." *Trump v. Boyle*, 606 U.S. ---, 145 S. Ct. 2653, 2654 (2025). And as the Supreme Court held in *D.V.D.*, the "June 23 order stayed the April 18 preliminary injunction in full[.]" 145 S. Ct. at 2629.

Nor would a weighing of the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), change this analysis. The three factors relevant to assessing Petitioners' due process claim are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest." *Mathews*, 424 U.S. 319, 335 (1976). Each factor weighs in Federal Respondents' favor.

1. Federal Respondents acknowledge that "'the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025)

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[3] This framework also requires rejection of any argument of entitlement to an individualized determination under the CAT regulations. The law provides for assurances that an alien would not be tortured if removed to a "specific country", but once the Attorney General and the Secretary of State deem those assurances "sufficiently reliable", that is the end of the inquiry. *See* 8 C.F.R. § 1208.18(c)(1)-(3); *see also Munaf*, 553 U.S. at 703 n.6.

(quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). But Petitioner is not in removal *proceedings* under 8 U.S.C. § 1229a; he is instead in the removal *period* under 8 U.S.C. § 1231(a)(1)(B). *See Semedo*, 2008 WL 5483028, at *2 ("When removal proceedings end, the removal period begins") (emphasis added). And "[w]hile acknowledging that aliens have due process rights, the [Supreme] Court [] made clear that '[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.'" *Miranda*, 34 F.4th at 360 (quoting *Demore v. Kim*, 538 U.S. 510, 521 (2003)) (internal citations omitted).

The private interests that Petitioner references are significantly diminished when Petitioner has been ordered removed. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022) ("[Petitioner]'s private interests are further diminished by the fact that he is subject to an order of removal from the United States); *see also Carlson v. Landon*, 342 U.S. 524, 538 (1952). Petitioners' private liberty interest is further diminished when their release is available on the condition that they leave the U.S. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 1999). Indeed, the Supreme Court and Fourth Circuit have made clear that an alien who has not been admitted, like Petitioner, "does not have the same status for due process purposes as an alien who has 'effected entry.'" *U.S. v. Guzman*, 998 F.3d 562, 569 (4th Cir. 2021) (quoting *Thuraissigiam*, 591 U.S. at 139-40 (cleaned up)); *See* FREX 1.

Accordingly, the first *Mathews* factor weighs in favor of the government.

2. Regarding the second factor, the risk of erroneous deprivation is at a minimum as Petitioner's screening was conducted by a highly trained USCIS asylum officer. "The legal framework surrounding the U.S. immigration, asylum, refugee, and non-*refoulement* adjudication process is complex, to say the least." *A.B.-B. v. Morgan*, 548 F. Supp. 3d 209, 221 (D.D.C. 2020) (emphasis in the original). As the USCIS website describes:

> The [asylum] training course includes topics such as international refugee law and the U.S. Asylum Program's role in world-wide refugee protection, U.S. asylum law and its interpretation by the Board of Immigration Appeals and federal appellate courts, interviewing techniques, researching country of origin information, and decision-making/writing. Separate training sessions address interviewing survivors of torture, identifying possible cases of victims of trafficking, handling cases of children, and handling claims that may be specific to women. The training course also includes lessons regarding the Asylum Program's history, organizational structure, mission, goals, and values, ethics, and an overview of the Asylum Program's process and procedures. Other topics covered include fraud identification and evaluation techniques, and national security concerns.

USCIS, *Asylum Division Training Programs* (last updated Dec. 19, 2016)[4] (emphasis added). A USCIS asylum officer is most equipped government officer to handle this type of screening. Indeed, Petitioner's screening was also reviewed by *supervisory* asylum officer, which concurred the negative fear finding.

Such review clearly minimizes any deprivation of Petitioner's interest. And ultimately, Petitioner's position here – once distilled to its essence – that he is entitled, as a matter of constitutional due process, to a separate *administrative* review in an adversarial setting of USCIS's trained administrative determination. Courts, however, have rejected the notion that a live, trial-like hearing is the cure-all for all potential due process ills. *See, e.g.*, *Buckingham v. Sec'y*, 603 F.3d 1073, 1082 (9th Cir. 2010); *Bowens v. N.C. Dep't of Hum. Res.*, 710 F.2d 1015, 1020 (4th Cir. 1983). Indeed, it is well within Petitioner's right to move to reopen his removal proceedings to allow an IJ to review USCIS's negative fear determination *and* seek a stay of removal. *See* 8 C.F.R. § 1003.23(b)(4)(i) (emphasis added). Therefore, the second *Mathews* factor favors the government.

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[4] Retrievable at: https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-division-training-programs (last accessed Jan. 15, 2026).

3. Regarding the third factor, the government's interests in the removal of aliens are legitimate and significant. As a general matter, the Supreme Court has stressed that the government "need[s] . . . flexibility in policy choices rather than the rigidity often characteristic of constitutional adjudication" when it comes to immigration regulation. *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Accepting Petitioner's position would flout this directive by injecting that very rigidity into the discretionary detention regime Congress adopted.

A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982); *Miranda*, 34 F.4th at 364 (same). "[A]ny policy toward [noncitizens] is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Diaz*, 426 U.S. at 81 n.17 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952). "Congress has repeatedly shown that it considers immigration enforcement—even against otherwise non-criminal aliens—to be a vital public interest[.]" *Miranda*, 34 F.4th at 364. Indeed, this Court has made clear that the government has a significant and "well-established interest in immigration regulation, the prompt execution of removal orders, prevention of flight risk, and public safety." *Castaneda*, 2022 WL 4624832, at *6 (internal quotations omitted). And "[t]he continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty.").

Therefore, the third *Mathews* factor weighs in favor of the government.

III. Proper Relief Regarding Vacatur of the Circumvention of Legal Pathways Rule (CLP) Should and Is Being Sought in Immigration Court.

The Petitioner asks this Court to grant his Motion for Writ of Habeas Corpus so that he can avail himself of asylum relief available with the vacatur of the CLP Rule. Petitioner claims that immigration judges have been directed to "re-adjudicate decisions accordingly, as if CLP had never existed." *See* Pet. For Writ of Habeas Corpus, Dkt. 1, pg. 2. However, the memo sent to IJ's based on the Office of General Counsels advise, via Chief Immigration Judge, Teresa L. Riley, instructed IJ's to "independently ***adjudicate*** their cases as if the rule never existed." *See* Pet. Ex. 7, Tab F. This is not a statement indicating that IJ's should re-adjudicate past matters as if the CLP rule never existed. It was a forward-looking statement indicating that matters coming before the court in the present should be adjudicated with no consideration to the vacated CLP rule. Petitioner filed a Motion for Reconsideration and Motion to Stay with the immigration court. An immigration court has considered Petitioner's Motion to Reopen based on the vacatur and denied the motion. The immigration court found vacatur in *East Bay Sanctuary Covenant*, did not "expressly apply vacatur "ab initio."" *See* FREX 6.

Petitioner further argues that he would not be granted a stay of removal before DHS would have him removed to Mexico based on *Matter of Herrera-Nunez*, 29 I&N Dec. 695 and *Matter of Yadav*, 29 I&N Dec. 438 (2026). Petitioner's argument is moot as EOIR granted his motion for Stay of Removal on July 9, 2026.

* * *

In any sense, Petitioner has received notice of third country removal to Mexico and had the opportunity to claim a fear in being removed to such country. And importantly, a highly trained USCIS asylum officer conducted such fear screening pursuant to 8 U.S.C. § 1231(b)(3)(A) and determine (as well as a supervisory asylum officer) that Petitioner would not be more than likely tortured if he were removed to Mexico. Nothing in the INA requires any further review, and the

Mathews factors demonstrate that Petitioner was afforded appropriate due process. Therefore, this Court should dismiss these claims.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully ask this Court to deny the Petition for a Writ of Habeas Corpus.