

ALINA HABBA
United States Attorney
DAVID W. INKELES
Assistant U.S. Attorney
970 Broad Street
Newark, NJ 07102
(973) 645-2813
david.inkeles@usdoj.gov
Attorneys for Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HORACIO MUNOZ-SAUCEDO,

Petitioner,

v.

YOLANDA PITTMAN, *et al.*,

Respondents.

Hon. Christine P. O'Hearn, U.S.D.J.

Civil Action No. 25-2258 (CPO)

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS
AND OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING
ORDER

On the Brief:

David W. Inkeles
Assistant U.S. Attorney

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PRELIMINARY STATEMENT

Petitioner is subject to a final order of removal from December 2022, following a finding by an immigration judge that he is inadmissible under the Immigration and Nationality Act (“INA”). Petitioner waived his right to appeal that decision, and the order of removal became final on December 15, 2022. In March 2023, following 90 days in U.S. Department of Homeland Security (“DHS”) custody due to the final order of removal, DHS released Petitioner on supervised release. A condition of his release was that Petitioner had to make good faith efforts to obtain travel documents from other countries to effectuate his removal. When, after two years, Petitioner failed to make any such efforts, DHS recently revoked his supervised release and detained him pursuant to the final removal order. All of this was lawful under the INA.

Petitioner now brings a habeas action under 28 U.S.C. § 2241, as well as a motion for a temporary restraining order (“TRO”) or preliminary injunction, seeking immediate release. But the Court does not have jurisdiction over the petition, both because he sues the wrong respondent in the wrong place (*i.e.*, he does not sue his immediate custodian in the district of confinement) and because 8 U.S.C. § 1252 bars review of his claims. And even if the Court had jurisdiction, the claims fail on the merits. The procedures followed by DHS regarding Petitioner’s supervised release, revocation, and detention complied with the INA and relevant regulations. They provided notice and opportunities for review. And they plainly did not violate the Administrative Procedure Act (“APA”) or due process. The Court should dismiss the petition and deny the TRO motion as moot.

BACKGROUND

I. Petitioner’s Immigration and Criminal History

Petitioner is a native and citizen of Mexico who entered the United States without inspection in September of 2006. *See* ECF No. 1 (“Pet.”), ¶¶ 27, 30. In 2020, Petitioner, who had been living in the United States since the 2006 unauthorized entry, began a text-message conversation with someone he met on a dating app “who stated that he was fourteen years old.” *Id.* ¶ 29. Petitioner agreed to meet the purported fourteen-year-old in person. *Id.*¹ When Petitioner arrived at the meeting, “he learned that he was communicating with an undercover detective.” *Id.* Petitioner was arrested. *Id.* He eventually pleaded guilty to endangering a child’s welfare in violation of New Jersey law and was sentenced to three years in prison. *Id.* (citing N.J. Stat. Ann. §§ 2C:24–4(A)(1), 2C:5–1(A)(1)).

In August of 2022, following Petitioner’s release from state custody, the U.S. Department of Homeland Security (“DHS”) began removal proceedings against him. *See id.* ¶¶ 29-30. DHS initially charged Petitioner with violations of 8 U.S.C. § 1182(a)(6)(A)(i)—which makes any alien present in the United States without admission or parole inadmissible; and 8 U.S.C. § 1182(a)(2)(A)(i)(I)—which makes any alien who commits a crime involving moral turpitude inadmissible. *See id.* ¶ 30. An immigration judge ultimately found Petitioner inadmissible, and subject to removal, under the former but not the latter provision. *Id.*

¹ Although Petitioner alleges that the person with whom he was texting stated that he was fourteen years old, Petitioner alleges that he agreed to attend the meeting because he did “[n]ot believe[e] that the person was underage.” Pet. ¶ 29.

A. The Final Order of Removal and Mandatory Detention

On December 15, 2022, based on the finding that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), an immigration judge ordered Petitioner's removal from the United States, while granting withholding of removal to Mexico. *See id.*; *see also* ECF No. 1-6 ("Order of the Immigration Judge"). The order of removal became final the same day, when Petitioner and the government waived their rights to appeal the immigration judge's decision. Pet. ¶¶ 2, 31; Order of the Immigration Judge. As a result of that final removal order, Petitioner was held in immigration detention for 90 days while DHS attempted to find a safe third country of removal. Pet. ¶ 32.

B. Petitioner's Release on an Order of Supervision

On March 15, 2023, after expiration of the 90-day removal period under 8 U.S.C. § 1231(a)(1)(A), DHS released Petitioner from custody subject to an Order of Supervision. *See* Declaration of Alexander Cabezas ("Cabezas Decl."), ¶ 5 & Exhibit A; *see also* ECF No. 1-7, at PageID: 38 ("Release Notification"); ECF No. 1-7, at PageID: 40 ("Form I-220B, Order of Supervision (Addendum)"); ECF No. 1-7, at PageID: 42 ("Form, I220B, Order of Supervision").

The Release Notification Petitioner received upon his release from detention set forth "certain written conditions . . . by which [Petitioner] must abide." Release Notification. One of those conditions was to "make good faith efforts to secure a travel document" to effectuate his removal, "and provide proof of [such] efforts to" U.S. Immigration and Customs Enforcement ("ICE"). *Id.* Along these lines, DHS also served Petitioner with an Order of Supervision upon his release, with a condition of

that Order being that Petitioner had to “assist [ICE] in obtaining any necessary travel documents.” Order of Supervision. In particular, the Order directed Petitioner to provide DHS with “written copies of requests to Embassies or Consulates requesting the issuance of a travel document,” as well as “written responses from the Embassy or Consulate regarding [any such] request.” Form I-220B, Order of Supervision (Addendum). This document made clear that noncompliance with these conditions could result in re-detention and potential criminal prosecution. *Id.*; see 8 U.S.C. § 1253 (outlining penalties for failure to depart following final removal order and failing to comply with terms of supervised release).

C. The Revocation of Release and Present Detention

Petitioner does not allege that he complied with the condition of his release which required that he provide ICE copies of written requests for travel documents to embassies or consulates. Nor does Petitioner allege that he made any good faith efforts to seek such travel documents. And on March 28, 2025, ICE served Petitioner with a Notice of Revocation for failing to comply with that condition of his release. *See* Pet. ¶ 33; ECF No. 1-8, at PageID: 45 (“Notice of Revocation”). Per the Notice of Revocation, ICE determined that Petitioner had “failed to make application in good faith for a travel document and ha[d] not provided ICE with written travel document requests or acceptance letters from alternate countries to affect [Petitioner’s] removal from the United States.” Notice of Revocation, at 1. As a result, ICE detained Petitioner in immigration custody. *Id.*; *see also* ECF No. 1-8, at PageID: 48 (“Warning for Failure to Depart”). In the Notice of Revocation, which ICE served Petitioner on

March 28, 2025, ICE indicated the grounds for Petitioner's detention; specified that Petitioner would "promptly" receive an informal interview to respond to the reasons for revocation of supervised release; and, if Petitioner was not released at that time, he would also receive "a new review, which will occur within approximately three months" from the date of the Notice. Notice of Revocation, at 1.

II. Procedural History

Petitioner filed this habeas petition less than a week later. The petition asserts three claims. First, Petitioner claims that his detention is unconstitutional because his deportation "is not reasonably foreseeable." Pet. ¶¶ 36-43. Second, Petitioner argues that ICE failed to provide "clear, written supervision requirements and the opportunity to comply before revoking" his supervised release, in purported violation of the APA and Due Process Clause. *Id.* ¶¶ 44-53. Finally, Petitioner brings another due process claim, again appearing to challenge the adequacy of the notice of his supervised release conditions as well as the lack of any present indication from DHS about which countries ICE is attempting to remove Petitioner to. *Id.* ¶¶ 55-56.

On April 24, 2025, Petitioner filed a motion for a TRO or preliminary injunction seeking immediate release from custody. *See* ECF No. 4. In the TRO motion, Petitioner asserts that his present detention, which he characterizes as both "prolonged and unlawful," creates a risk of irreparable harm. ECF No. 4-1 ("Pl. Br."), at 14. The same day, the parties agreed to an expedited briefing schedule on the TRO motion. *See* ECF No. 5. And on April 25, the Court entered an Order to Answer, which provided that "Respondents shall file and serve an expedited answer"

responding both to the claims and allegations in the petition as well as the TRO motion. ECF No. 7, at 1-2. Respondents submit this memorandum of law in response to the petition and in opposition to the TRO.

III. Relevant Statutory and Regulatory Background

A. Removal and Detention Under 8 U.S.C. § 1231(a)

Where, as here, an alien is subject to a final order of removal, there is a 90-day “removal period,” during which the government “shall” remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). And the mandatory removal period begins on the latest of three possible dates: (1) the date an order of removal becomes “administratively final,” (2) the date of the final order of any court that entered a stay of removal, or (3) the date the alien is released from non-immigration detention. 8 U.S.C. § 1231(a)(1)(B).

There are at least three potential outcomes in the event the government does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those “inadmissible” under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention

under this latter category is often referred to as the “post-removal-period.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021)

The INA does not place an explicit time limit on how long detention during the “post-removal-period” can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time “reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). And the Supreme Court further clarified that a six-month period of detention is “presumptively reasonable.” *Id.* at 701. “After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

B. Orders of Supervision

In the event the government does not further detain and instead releases the alien at the end of the 90-day mandatory removal period, the government must do so under conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3) (providing that a alien who “does not leave or is not removed within the removal period ... shall be subject to supervision”); *see also* 8 C.F.R. §§ 241.4(j); 241.5. Regulations promulgated pursuant to the INA require that conditions of supervised release include: reporting to an immigration officer; making “efforts to obtain a travel document and assist[ing] the [government] in obtaining a travel document”; reporting for physical and mental

examinations; obtaining advance approval of travel; and providing ICE with written notice of any address changes. *See* 8 C.F.R. § 241.5(a).

If the alien violates a condition of release, the government can revoke the order of supervision and return the alien to custody. *See* 8 C.F.R. § 241.4(l). In that scenario, the government must notify the alien of “the reasons for revocation,” and “conduct an initial interview promptly” to give the alien “an opportunity to respond to the reasons for revocation stated in the notification.” *See id.* § 241.4(l)(1). If the alien is not released after the initial interview, there is a subsequent review process, one which entails a records review and scheduling of an interview which ordinarily takes place within three months of the revocation of release. *Id.* § 241.4(l)(3). The final review includes an evaluation of any disputed facts, and a decision as to whether the facts as determined support revocation and further denial of release. *Id.* Thereafter, the government conducts annual custody reviews in accordance with 8 C.F.R. §§ 241.4(i), (j), and (k). *Id.*

C. Suspension of Removal Under 8 U.S.C. § 1231(a)(1)(C)

As noted above, a separate basis for detention of aliens with final orders of removal is via an extension of the removal period in circumstances where the alien “fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure.” 8 U.S.C. § 1231(a)(1)(C). In such cases, the government must serve the alien a “Notice of Failure to Comply,” which sets forth the relevant statutory provisions in play (8 U.S.C. §§ 1231(a)(1)(C), 1253(a)), and provides “an explanation of the necessary steps that the alien must take in order to comply

with the statutory requirements.” 8 C.F.R. § 241.4(g)(5)(ii). The government must also advise the alien that the “Notice of Failure to Comply shall have the effect of extending the removal period as provided by law, if the removal period has not yet expired,” and that the government is not required to complete any scheduled custody reviews under 8 C.F.R. § 241.4 until the alien has “demonstrated compliance with the statutory obligations.” *Id.* § 241.4(g)(5)(iii).

D. Removal to Third Country

As a general matter, aliens ordered removed “may designate one country to which [he or she] wants to be removed,” and DHS “shall remove the alien to [that] country[.]” 8 U.S.C. § 1231(b)(2)(A). In certain cases, however, DHS will not remove the alien to his or her designated country, including if “the government of the country is not willing to accept the alien into the country.” *Id.* § 1231(b)(2)(C)(iii). In that scenario, the alien “shall” be removed to his or her country of nationality or citizenship, unless the country “is not willing to accept” the alien.” *Id.* § 1231(b)(2)(D). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including “[t]he country from which the alien was admitted to the United States,” “[t]he country in which the alien was born,” or “[t]he country in which the alien last resided[.]” *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv).

Where removal to any of the countries listed in subparagraph (E) is “impracticable, inadvisable, or impossible,” then the alien may be removed to any “country whose government will accept the alien into that country.” *Id.* §

1231(b)(2)(E)(vii); see *Jama v. Immigr. & Customs Enft.*, 543 U.S. 335, 341 (2005). In addition, DHS “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 [his or her] race, religion, nationality, membership in a particular social group, or political opinion,” 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

LEGAL ARGUMENT

I. THE COURT SHOULD DISMISS THE HABEAS PETITION

A. This Court Lacks Jurisdiction Over the Petition

1. The Petition Sues the Wrong Custodian in the Wrong District

In habeas cases, “the default rule” has long been “that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Indeed, for “over 100 years,” the Supreme Court has held that the proper respondent in a habeas challenge to present confinement is the person who has “immediate custody” of the petitioner. *Id.* at 434-35 (citing *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). The proper respondent is, in other words, the “person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge[.]” *Id.* at 435 (emphasis in original). And for habeas petitions like this one—challenging present detention—“jurisdiction lies in only one district: the district of confinement.” *Id.* at 443.

The Supreme Court just reiterated these principles in the immigration context akin to the one here, holding in no uncertain terms that where, as here, an alien challenges his or her detention and removal in habeas, “jurisdiction lies in only one district: the district of confinement.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (per curiam).² In *J.G.G.*, a group of Venezuelan nationals in immigration detention filed suit in the U.S. District Court for the District of Columbia, seeking relief against their removal under the Alien Enemies Act (“AEA”). *See id.* at 1005. “Initially, the detainees sought relief in habeas among other causes of action, but they dismissed their habeas claims.” *Id.* After the District Court for the District of Columbia issued two TROs preventing the plaintiffs’ removal, and the U.S. Court of Appeals for the D.C. Circuit denied the government’s motion for an emergency stay of those orders, the government appealed to the Supreme Court. *See id.* There, the Supreme Court first concluded that, notwithstanding plaintiffs’ dismissal of the habeas claims, their claims fell “within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Id.* After all, the claims sought relief from removal

² Although *Padilla* addressed a habeas petition in the prisoner context, the Third Circuit had, even before *J.G.G.*, applied the “district of confinement” and “immediate custodian” rules in the immigration setting. *See Anariba v. Dir. Hudson Cnty. Corr. Ctr.*, 17 F.4th 434, 444 (3d Cir. 2021) (“Whenever a § 2241 habeas petitioner seeks to challenge present physical custody within the United States, he [or she] should name his [or her] warden as respondent and file the petition in the district of confinement” (citation omitted)). So did numerous courts within this District. *See Eddine v. Chertoff*, No. 07-6117(FSH), 2008 WL 630043, at *2 (D.N.J. Mar. 5, 2008); *see also, e.g., Allen v. Chertoff*, No. 10-1003 (FLW), 2010 WL 743916, at *2 (D.N.J. Mar. 4, 2010); *Leybinsky v. DHS*, No. 09-1965 (GEB), 2009 WL 1228586, at *2 (D.N.J. May 1, 2009); *Ali v. DHS*, No. 11-2072 (FSH), 2012 WL 15750, at *2 (D.N.J. Jan. 4, 2012) (same).

under the AEA, and thus “necessarily imply the invalidity of their confinement and removal under the AEA.” *Id.* (internal quotation and citation omitted). And because, in habeas cases, “jurisdiction lies in only one district: the district of confinement,” the Supreme Court concluded that the plaintiffs were not likely to succeed on the merits of their claims in the the District of Columbia because the plaintiffs in that case were “confined in Texas.” *Id.* at 1005-06; *see also id.* at 1006 (holding that proper venue for core immigration habeas petition “lies in the district of confinement.”).

Applying these principles here, this Court should dismiss this habeas petition for lack of jurisdiction.³ Petitioner is not confined in the District of New Jersey. Nor was Petitioner detained in the District of New Jersey at the time his attorneys filed this petition. Instead, he was aboard a flight to Texas. *See Cabezas Decl.*, ¶ 14.⁴ Petitioner’s immediate custodian, moreover, is the Warden of the El Paso Service Processing Center, not the Warden of the Elizabeth Contract Detention Facility. As a result, the habeas petition does not name the proper custodian and was not filed in the district of confinement. This Court should dismiss the petition for lack of habeas

³ Alternatively, the Court should transfer the petition to the Western District of Texas, where Petitioner is currently being detained, and where he was in transit to for confinement at the time he filed this petition.

⁴ According to the docket public PACER/ECF docket activity report, Petitioner’s attorneys filed this habeas petition at 5:40 p.m. on April 2, 2025. *See Declaration of Counsel*, Exhibit A. At 3:00 p.m. on April 2, Petitioner left the Elizabeth Contract Detention Facility. *Cabezas Decl.*, ¶ 12. And by 3:55 p.m. on April 2, he was on a flight to Texas. *Id.* ¶ 14. Petitioner arrived in Texas at 7:35 p.m. (Central time) on April 2 and was booked into the Port Isabel Service Processing Center at 12:10 a.m. (Central time), on April 3. *Id.* ¶ 15. Petitioner was at Port Isabel until April 4, when he was booked into the El Paso Service Processing Center, where he is currently detained. *Id.* ¶¶ 16-17.

jurisdiction. *See, e.g., De La Cruz Disla v. Hogsten*, 155 F. App'x 619, 619–20 (3d Cir. 2005); *Repella v. Luzerne Cnty. Child. & Youth Servs.*, No. 22-1130, 2022 WL 16729431, at *1 (3d Cir. Apr. 22, 2022) (“Jurists of reason would not debate the District Court’s decision to dismiss Appellant’s filing for lack of habeas jurisdiction.”); *Glover v. City of Philadelphia*, No. 24-1479, 2024 WL 3272912, at *1 (3d Cir. July 2, 2024) (affirming dismissal for lack of habeas jurisdiction because the petitioner was not in custody).

The recent decision from within this District in *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 153, 2025 WL 972959 (D.N.J. Apr. 1, 2025), does not alter this conclusion. In that case, the petitioner filed a habeas petition in the U.S. District Court for the Southern District of New York when he was in fact detained in the District of New Jersey. The Southern District of New York then transferred the petition to the District New Jersey. But by then, the petitioner had been moved to the Western District of Louisiana and was therefore no longer in New Jersey. In rejecting a motion to dismiss for lack of habeas jurisdiction (or in the alternative to transfer), the District Court for the District of New Jersey relied on 28 U.S.C. § 1631, which permits a transferor court to transfer a case for lack of jurisdiction to a transferee court in which the case could have been brought at the time of filing. And because the petitioner in *Khalil* was in New Jersey at the time of filing, the District Court concluded, the petition could have been filed in the District of New Jersey when it was improperly filed in the Southern District of New York. Accordingly, the District Court determined that it retained jurisdiction under 28 U.S.C. § 1631. *See*

id. at *15-20. The District Court also applied the “unknown custodian” exception to the petitioner’s failure to name his immediate custodian at the time of filing, since “as of the time of filing” the petitioner’s attorneys “could not know” that the petitioner was in New Jersey. *See id.* at *35.

This case is different. It does not require any analysis of 28 U.S.C. § 1631. Instead, application of “the default rule[s] . . . that the proper respondent is the warden of the facility where the prisoner is being held,” and that “jurisdiction lies in only one district: the district of confinement” provide the answer. *Padilla*, 542 U.S. at 435, 443 *see also J.G.G.*, 145 S. Ct. at 1005-06. Here, unlike in *Khalil*, Petitioner was not detained in this District at the time of filing. *See Cabezas Decl.*, ¶ 14. He was, instead, in transit to Texas. Here, unlike in *Khalil*, Petitioner could not have properly brought the petition in this District at the time of filing. In addition, the day the petition was filed, ICE served Petitioner with a Notice of Transfer, informing Petitioner that he would be transferred to the El Paso Service Processing Center. Accordingly, the identity of his custodian in the district of his confinement was known the day of filing. The “unknown custodian” exception should not apply, and the Court may dismiss the case for lack of habeas jurisdiction.

2. The INA and REAL ID Act Deprive This Court of Jurisdiction

Federal courts are courts of limited jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They “possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Id.* (citations omitted); *see also Sheldon v. Sill*, 49 U.S. 441, 448 (1850)

(“Courts created by statute can have no jurisdiction but such as statute confers.”); *cf. Romano v. Warden, FCI Fairton*, No. 23-2919 (CPO), 2025 WL 1189877, at *8 (D.N.J. Apr. 24, 2025) (observing, in prison habeas context, “[f]ederal courts are courts of limited jurisdiction,” and where “Congress has committed a decision to the unreviewable discretion of the BOP . . . § 2241 offers no basis for judicial intervention.”).

Through this habeas action, Petitioner challenges the recent revocation of his supervised release and present detention for purposes of executing a final order of removal. Congress, however, divested this Court from hearing such claims by way of the INA and the REAL ID Act. *See* 8 U.S.C. §§ 1252(b)(9), (g). For these reasons, as discussed below, the Court lacks jurisdiction over Petitioner’s claims challenging the revocation of supervised release and re-detention pending removal.

At the outset, 8 U.S.C. § 1252(g), as amended by the REAL ID Act, deprives courts of jurisdiction—including habeas corpus jurisdiction—over reviewing “any” claim “arising from the decision or action” to (among other things) “execute removal orders.” Put differently, this provision bars habeas review in federal district court of claims arising from a decision or action to “execute” a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S. 471, 482 (1999).⁵ That provision bars Petitioner’s claims here.

⁵ Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title” after “notwithstanding any other provision of

Indeed, every circuit court of appeals to address the issue—including the Third Circuit—has held that § 1252(g) eliminates subject-matter jurisdiction over habeas challenges (including those raising constitutional claims) to an arrest or detention for the purpose of executing a final removal order. *See Tazu v. Atty. Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (“The plain text of § 1252(g) covers decisions about *whether* and *when* to execute a removal order.”); *see also Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding court lacked jurisdiction over habeas challenge to the exercise of discretion to execute removal order); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021) (holding § 1252(g) barred review of decision to execute removal order while individual sought administrative relief); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government’s *authority* to execute a removal order rather than its *execution* of a removal order.”); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) (“Under a plain reading of the text of the statute, the Attorney General’s enforcement of long-standing removal orders falls squarely under the Attorney General’s decision to execute removal orders and is not subject to judicial review.”).⁶

law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)’s reference to the “Attorney General” includes the Secretary of Homeland Security. 6 U.S.C. § 202(3).

⁶ Relatedly, § 1252(g) bars district court review of challenges to the method by which DHS chooses to commence removal proceedings. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning

The Third Circuit’s decision in *Tazu* is instructive. There, the petitioner sought to challenge the government’s decision to re-detain him for prompt removal, claiming—much like Petitioner here—that a revocation of supervised release without notice and a revocation interview allegedly violated agency rules and due process. *See Tazu*, 975 F.3d at 298. The Third Circuit found that claim barred by 8 U.S.C. § 1252(g) because it sought to challenge “a key part of executing” a removal order: a “short re-detention for removal.” *Id.* As the Third Circuit recognized, re-detaining the petitioner was “simply the enforcement mechanism the [government] picked to execute [the petitioner’s] removal order.” *Id.* at 298-99. And § 1252(g) “funnels review” of such claims away from the district courts, and to the courts of appeals through a petition for review. *Id.* at 299. Here, as in *Tazu*, Petitioner challenges the enforcement mechanism utilized to execute his final order of removal: the decision to revoke supervised release and re-detain him pending removal. Here, as in *Tazu*, this Court lacks jurisdiction over such claims under 8 U.S.C. § 1252(g).

Petitioner’s challenges regarding the execution of his final removal order are also foreclosed under 8 U.S.C. § 1252(b)(9). In passing the REAL ID Act, Congress prescribed a single path for Article III review of removal orders: “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5); *see also Verde-*

ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.”); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest Saadulloev on April 4, 2023, clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”).

Rodriguez v. Atty. Gen., 734 F.3d 198, 201 (3d Cir. 2013). And as the REAL ID Act further provides. “[j]udicial review of *all questions of law and fact*, including interpretation of constitutional and statutory provisions, *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section.” 8 U.S.C. § 1252(b)(9) (emphasis added). Read in conjunction, 8 U.S.C. § 1252(b)(9) and § 1252(a)(5) express Congress’s intent to funnel judicial review of every aspect of removal proceedings into a petition for review filed in the courts of appeals. *See Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) (recognizing that these provisions “clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals.”); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (highlighting Congress’s “clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals)” via petition for review).

These provisions sweep more broadly than § 1252(g). *See AADC*, 525 U.S. at 483. Indeed, pursuant to § 1252(b)(9) and 1252(a)(5), “most claims that even relate to removal” are improper if brought before the district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020); *see also AADC*, 525 U.S. at 483 (describing § 1252(b)(9) as an “unmistakable zipper clause,” and defining a zipper clause as one “that says ‘no judicial review in deportation cases unless this section provides judicial review.’”). Here, 8 U.S.C. § 1252(b)(9) deprives this Court of jurisdiction over Petitioner’s claims.

Once again, the Third Circuit's *Tazu* decision guides the analysis. In another part of that decision, the Third Circuit held that the same claims concerning a revocation of supervised release and re-detention which were barred under 1252(g) were also barred under 1252(b)(9) because the claims arose from actions taken to execute the petitioner's removal. 975 F.3d at 299. Here, as in *Tazu*, Petitioner's claims challenge the government's decision to revoke supervised release and re-detain him for removal. Petitioner's claims arise directly out of actions taken to remove him, and the questions raised by those claims are intertwined with his removal. *See id.*

Another recent decision from the District Court in *Khalil v. Joyce*, No. 25-1963 (MEF), ECF No. 214, 2025 WL 1232369 (D.N.J. Apr. 29, 2025), does not cast doubt on the conclusion that 8 U.S.C. §§ 1252(g) and 1252(b)(9) apply here. In that case, unlike here, the petitioner had not been issued a final removal order, and so the District Court concluded that § 1252(b)(9) did not apply because that provision "takes away federal district court jurisdiction only after an order of removal has been entered," and "none ha[d] been entered" in that case. *Id.* at *60. As to § 1252(g), the District Court found that it was inapplicable because the provision "pulls away jurisdiction over specific actions" by DHS—"not over actions by the Secretary of State, like [the] determination" at issue, "and not over across-the-board policies, like the one alleged" in that case. *Id.* Here, Petitioner does not challenge any action by the Secretary of State, nor does he attack any alleged broad-based policies. The reasoning behind the recent jurisdictional decision in *Khalil* does not affect the conclusion here.

That conclusion, for the reasons above, is that Petitioner's claims fall within the INA's jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9), so the Court should dismiss the petition for lack of jurisdiction.⁷

B. Petitioner's Detention is Lawful (Count I)

There is no dispute that Petitioner is subject to a final order of removal. *See* Pet. ¶¶ 2, 31. As a result, the "post-order" detention provisions of 8 U.S.C. § 1231 govern. Those provisions require a 90-day mandatory removal period during which immigration officials must detain the alien while attempting to secure his or her removal. *See* 8 U.S.C. §§ 1231(a)(1), (2); *see Zadvydas*, 533 U.S. 683 ("After entry of a final removal order and during the 90-day removal period quo . . . aliens must be held in custody." (internal citation omitted)).

Congress, however, provided for the detention of aliens following the 90-day removal period in certain circumstances. As discussed, the Supreme Court has interpreted 8 U.S.C. § 1231(a)(6) to allow for post-order detention for a period "reasonably necessary to bring about the alien's removal from the United States."

⁷ Respondents are also aware of an out-of-district case *Patel v. Barr*, No. 20-3856, 2020 WL 6888250, at *3 (E.D. Pa. Nov. 24, 2020), but respectfully submit that the case is also distinguishable. In *Patel*, the district court held that the jurisdiction-stripping provisions in 8 U.S.C. §§ 1252(b)(9) and 1252(g) did not apply, notwithstanding *Tazu*, because while *Tazu* had a pending petition for review and had been granted a stay of removal, *Patel* had neither. Because, in *Patel*, the Board of Immigration Appeals delayed ruling on *Patel*'s various motions, the court found that *Patel* "ha[d] no access to judicial review." *Id.* at *3. Here, however, Petitioner's immigration decisions are administratively final. Petitioner could have sought review of the immigration judge's decision. But he did not, and waived his administrative appeal, thus rendering that decision by the immigration judge administratively final.

Zadvydas, 533 U.S. at 689. And the Court held that detention for a period of six months is “presumptively reasonable.” *Id.* After that six-month period, the alien bears the burden of showing that “there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the alien successfully makes that showing, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* In addition, the 90-day removal period may be tolled and the alien “may remain in detention during such extended period if [he or she] fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the alien’s removal subject to an order of removal.” 8 U.S.C. § 1231(a)(1)(C).

Here, Petitioner was detained for the 90-day removal period until his release on an order of supervision on March 15, 2023. He now challenges his present detention, which began on March 28, 2025, when ICE revoked Petitioner’s supervised release. *See* Pet. ¶ 33. That detention is lawful and presumptively reasonable under *Zadvydas*. To hold otherwise, Petitioner would have to demonstrate that he has been in (1) “post-removal order detention in excess of six months,” and there is (2) “evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Jaime F. v. Barr*, No. 19-20706 (ES), 2020 WL 2316437, at *5 (D.N.J. May 11, 2020) (quotation omitted); *see also, e.g., Di Wang v. Carbone*, Civ. No. 05-2386 (JAP), 2005 WL 2656677 at *3 (D.N.J. Oct. 17, 2005). Petitioner makes neither showing.

1. Petitioner's *Zadvydas* Claim Is Premature

At the outset, Petitioner's *Zadvydas* claim is premature because he has been detained on a final order of removal for less than the “presumptively reasonable” six-month period. *See* 533 U.S. at 701. Based on a straightforward application of *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained “for less than six months must be dismissed as premature.” *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) (“To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal.”). In this case, Petitioner was initially detained for the 90-day removal period until March 15, 2023. He was then on supervised release for over two years. He was not detained again until March 28, 2025. Thus, at the time he filed this habeas petition on April 2, 2025, he had been detained pursuant to the final order of removal for just over 90 days. And to date, he has been detained for approximately four months. The Court should dismiss Count I without prejudice as premature because Petitioner has not been detained beyond the six-month period set forth in *Zadvydas*.

2. Petitioner Cannot Establish There Is No Significant Likelihood of his Removal in the Reasonably Foreseeable Future

Even assuming it was not premature, Count I fails for an additional reason: Petitioner cannot demonstrate that there is no significant likelihood of removal in the

reasonably foreseeable future. *See Zadvydas*, 533 U.S. at 701 (explaining alien challenging detention beyond six-month period bears burden of showing there is no significant likelihood of removal in reasonably foreseeable future).

“Numerous courts in this District have held that a detainee’s failure to cooperate in obtaining travel documents precludes a finding that his or her removal is not reasonably foreseeable.” *Ugarte v. Green*, No. 17-1436 (SRC), 2017 WL 6376498, at *3 (D.N.J. Dec. 13, 2017) (collecting cases); *see also, e.g., Conceicao v. Holder*, No. 12-4668, 2013 WL 1121373, at *3 (D.N.J. Mar.13, 2013) (“[W]here Petitioner is refusing to sign the necessary travel documents, he has failed to cooperate in his removal and has failed, in this Court, to establish that there is no likelihood of his removal in the reasonably foreseeable future.”); *Camara v. Gonzales*, No. 06-1568, 2007 WL 4322949, at *4 (D.N.J. Dec. 6, 2007) (finding petitioner did not state constitutional claim under *Zadvydas* due to failure to cooperate with obtaining necessary travel documentation). Here, Petitioner received a final order of removal on December 15, 2022. Pet. ¶¶ 2, 31. But he does not allege he made any attempt to cooperate in his removal in the more than two years since then. He does not allege that he made any effort to obtain travel documents, such as by submitting applications for travel documents to embassies or consulates as was required by the Order of Supervision and the INA. That failure to cooperate in removal forecloses Petitioner’s *Zadvydas* claim.

For similar reasons, Petitioner's detention is also lawful under 8 U.S.C. § 1231(a)(1)(C), which provides for suspension of the removal period and detention "beyond a period of 90 days" if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to [his or her] departure." "Courts have long held that [8 U.S.C. § 1231(a)(1)(C)] not only stands for the proposition that the removal period may be extended where an alien is the impediment to his [or her] own removal, but also that such an alien cannot demand his [or her] release under *Zadvydas* as he [or she] has the keys to his [or her] freedom in his [or her] pocket and could likely effectuate his [or her] removal by providing the necessary information to the appropriate officials." *Bailey v. Lynch*, No. 16-2600 (JLL), 2016 WL 5791407, at *3 (D.N.J. Oct. 3, 2016). Here, again, Petitioner does not allege that he made any effort to assist in his removal. Indeed, the failure to provide copies of travel document requests from alternate countries was the basis for the revocation of his supervision release. *See* Notice of Revocation.⁸

⁸ Whether ICE has formally served Petitioner with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) does not foreclose application of 8 U.S.C. § 1231(a)(1)(C) here. Indeed, the governing regulations specifically provide that "[t]he fact that [DHS] does not provide a Notice of Failure to Comply within the 90-day removal period, to an alien who has failed to comply with the requirements of [8 U.S.C. § 1231(a)(1)(C)] shall not have the effect of excusing the alien's conduct." 8 C.F.R. § 241.4(g)(5)(iv); *see also Ling v. Hendricks*, No. 13-7610 (KM), 2014 WL 1310294, at *6 n. 2 (D.N.J. Mar. 27, 2014). Accordingly, courts have found the removal period extended under 8 U.S.C. § 1231(a)(1)(C) even where the government has not yet technically served a Notice of Failure to Comply. *See id.*; *see also de Souza Neto v. Smith*, No. 17-11979, 2017 WL 6337464, at *1 n. 2 (D. Mass. Oct. 16, 2017) ("Although [petitioner] alleges that ICE did not provide her with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) that her removal period has been extended, the lack of notice 'shall not have the effect of excusing the alien's conduct.' 8 C.F.R. § 241.4(g)(5)(iv)").

In the end, the INA imposes an affirmative duty on an alien “to make timely application in good faith for travel and other documents necessary to [his or her] departure,” and prescribes criminal penalties for willful failure to do so. *See* 8 U.S.C. § 1253(a)(1). Courts examining prolonged detention claims have thus considered whether a petitioner has acted in a manner as to hinder or prevent removal such that the six-month presumptively reasonable period under *Zadvydas* should be tolled. Where an alien “takes actions delaying his/her removal (e.g. by refusing to cooperate with the ICE’s removal efforts),” he or she “cannot demand his/her release upon expiration of these six months.” *Xiangquan v. Holder*, No. 12-7650 (MAS), 2013 WL 1750145, at *3 (D.N.J. Apr. 23, 2013). “The reason is self-evident:” when an alien does not demonstrate that he or she has made good faith efforts to assist with securing travel documents necessary to effectuate his or her removal, the alien, once detained, “cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock.” *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003). Accordingly, “*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal.” *U.S. ex rel. Kovalev v. Ashcroft*, 71 F. App’x 919, 924 (3d Cir. 2003) (quoting *Pelich*, 329 F.3d at 1060). Such is the case here.

For the reasons above, assuming the Court finds habeas jurisdiction, the Court should dismiss the *Zadvydas* claim in Count I on the merits.⁹

⁹ The *Zadvydas* claim is not subject to the jurisdiction-stripping provisions discussed above. *See Tazu*, 975 F.3d at 299. Accordingly, Respondents seek dismissal of Count I for lack of habeas jurisdiction and on the merits, but not based on § 1252.

C. The APA and Due Process Claims Also Fail (Counts II and III)

In Counts II and III, Petitioner challenges ICE's revocation of supervised release for the purpose of executing the final removal order to an alternate country (i.e., a country other than Mexico, where Petitioner has withholding of removal). In Count II, Petitioner alleges that ICE failed to provide "clear, written supervision requirements and the opportunity to comply [with those requirements] before revoking" his supervised release, in purported violation of agency policies and the Due Process Clause. Pet. ¶¶ 44-54. And in Count III, Petitioner similarly claims that the order of supervision and related instructions did not provide "adequate notice of his supervision requirements," along with the absence of notice as to the countries under consideration as removal destinations, in alleged violation of his due process rights. *Id.* ¶¶ 55-56. The Court should dismiss these counts because Petitioner cannot state an APA or due process violation as a matter of law.

1. The Order of Supervision Did Not Violate Statute or Regulation

Count II is premised on the assertion that ICE "clearly flouted" its "national policy" of providing aliens "with clear, written supervision requirements and the opportunity to comply before revoking a post-order supervision order." Pet. ¶¶ 50-51. But Petitioner does not identify any statutory or regulatory provision that the order of supervision violated. Instead, Petitioner cites generally to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5(a)(2). The former provides minimum statutory requirements for conditions of supervised release pending removal, while the latter provision sets out the regulatory requirements that an order of supervision must

include. To the extent that Petitioner takes issue with the fact that the order of supervision “did not specify which countries [Petitioner] was supposed to reach out to,” or “how many requests [he] was supposed to make to satisfy that requirement,” *id.* ¶ 51, he fails to explain how any of this amounts to a violation of any mandatory statutory or regulatory requirement. Indeed, neither provision Petitioner cited requires DHS to provide written notice of specific countries that an alien must contact in attempting to secure travel documents to effectuate a final order of removal to a third country. And 8 C.F.R. § 241.5(a)(2) specifically requires that an order of supervision “shall” include “[a] requirement that the alien continue efforts to obtain a travel document and assist [DHS] in obtaining a travel document.” That is precisely what the order of supervision required here. *See supra*, pp. 3-4. The Court should dismiss the APA claim in Count II.

2. The Order of Supervision Comported with Due Process

The same conclusion applies as to the due process challenge to the order of supervision in Counts II and III. The basic elements of due process are notice and an opportunity to be heard. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, Petitioner received notice of the condition of supervised release that he challenges in this habeas action. And he has not alleged any facts to demonstrate that he was denied an opportunity to be heard in connection with the order of supervision or instructions that governed his supervised release.

As detailed above, Petitioner was issued a final order of removal on December 15, 2022, and he waived appeal of that removal order. Following the 90-day mandatory removal period, ICE released Petitioner on an order of supervision. It is plain that “ICE has the statutory and regulatory authority to release persons with removal orders under an order of supervision.” *See Desouza v. Garland*, No. 21-3961, 2022 WL 1773604, at *3 (E.D. Pa. May 31, 2022). Petitioner also received constitutionally adequate notice of the condition of release requiring that he make good faith efforts to obtain travel documents. After issuing the Order of Supervision, ICE provided Petitioner with multiple documents that included written notice of the conditions of release and penalties for noncompliance. *See generally* Release Notification; Form I-220B, Order of Supervision (Addendum); Form, I220B, Order of Supervision. One penalty was revocation of release.

Petitioner then had multiple opportunities over the course of two years to challenge the conditions of release, seek clarification, or comply with the order of supervision. He did none of these things. According to a declaration submitted in support of the TRO motion, Petitioner attended at least two periodic check-ins with ICE since his release on an order of supervision in March of 2023. *See* ECF No. 4-4, Byelyakova Declaration (“Pl. Decl.”), ¶¶ 10-12. He had immigration counsel at the time of his 2022 and 2023 removal proceedings, the same counsel representing him here. *See id.* ¶ 3. And Petitioner had the opportunity to ask ICE for clarification as to those conditions—and specifically, to ask for any additional information related to the condition that he make efforts to obtain travel documents. Petitioner does not

allege that he or his attorney sought clarification at any point during the two-year period he was on supervised release. Nor does Petitioner allege that he made efforts to obtain a travel document or provide ICE with written requests for travel documents or acceptance letters from alternate countries.

None of this amounts to a due process violation. The INA authorizes supervised release of aliens in Petitioner's shoes, *see* 8 U.S.C. § 1231(a)(3), and implementing regulations require that the alien be subject to conditions of supervision which include the very condition he challenges here: making efforts to obtain travel documents to facilitate removal, *see* 8 C.F.R. § 241.5(a)(2). The condition of supervised release that required Petitioner to make good faith efforts to secure travel documents to help secure his removal fell "squarely within the parameters authorized by the statute and the regulations," and thus fails to rise to a due process violation. *See Desouza*, 2022 WL 1773604, at *3.

3. Any Due Process Claim Regarding Third Country Removal Fails

To the extent that Petitioner presses an additional due process claim based on the absence of any present "indication of supposed third country removal efforts," Pet. ¶ 56, that claim fails as well. Indeed, any such claim is premature. A procedural due process claim, as noted above, has two elements: (1) notice, and (2) an opportunity to be heard. *See Matthews*, 424 U.S. at 333. And here, Petitioner has not demonstrated he has or will be deprived of these requirements when it comes to his removal to an alternate third country.

Although DHS recently re-detained Petitioner subject to the final order of removal, and in preparation for removal to a third country, there is no allegation that Petitioner's removal has yet been scheduled. Because DHS is still in the process of investigating a third country of removal, the claim challenging lack of "notice" of such removal is not ripe for judicial review. *See Texas v. United States*, 523 U.S. 296, 300 (1998) (a "claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (cleaned up)).¹⁰

More still, Petitioner is a member of a Rule 23(b)(2) class of plaintiffs subject to a nationwide preliminary injunction in *D.V.D. v. D.H.S., et al.*, No. 25-10676 (D. Mass.). In that case, the District of Massachusetts issued a nationwide preliminary injunction ordering DHS to abide by the following requirements with respect to third country removals of aliens including Petitioner:

"[P]rior to removing any alien to a third country, i.e., any country not explicitly provided for on the alien's order of removal, Defendants must: (1) provide written notice to the alien—and the alien's immigration counsel, if any—of the third country to which the alien may be removed, in a language the alien can understand; (2) provide meaningful opportunity for the alien to raise a fear of return for eligibility for [Convention Against Torture] protections; (3) move to reopen the proceedings if the alien demonstrates 'reasonable fear;' and (4) if the alien is not found to have demonstrated "reasonable fear," provide meaningful opportunity, and a minimum of 15 days, for that alien to

¹⁰ Petitioner, moreover, has an opportunity to file a motion to reopen and assert claims for relief and protection from removal to additional countries. Petitioner does not allege that he has sought to do so. This, too, counsels in favor of dismissing any putative due process claim related to third country removal in Count III. *See Wilson v. MVM, Inc.*, 475 F.3d 166, 176 (3d Cir. 2007) ("Before bringing claim for failure to provide due process, a plaintiff must have taken advantage of the processes that are available to him or her, unless those processes are unavailable or patently inadequate." (quotation and citation omitted)).

seek to move to reopen immigration proceedings to challenge the potential third-country removal.”

See D.V.D., No. 25-10676, 2025 WL 1142968, at *24 (D. Mass. Apr. 18, 2025), *appeal filed*, No. 25-1393 (1st Cir. Apr. 22, 2025). Petitioner’s membership in the *D.V.D.* class, which the court certified under Rule 23(b)(2), is not waivable. *See Barnes v. American Tobacco Co.*, 161 F.3d 127, 142-43 (3d Cir. 1998) (recognizing that in a Rule 23(b)(2) “class action, unnamed members are bound by the action without the opportunity to opt out.”). The *D.V.D.* case remains pending before the U.S. Court of Appeals for the First Circuit. And that case deals specifically with the portion of Count III related to third country removal here. Accordingly, the Court should dismiss the portion of Count III dealing with potential third country removal for the reasons above (and because Plaintiff is already litigating that claim in another forum); or, in the alternative, Respondents respectfully request that the Court issue a partial stay as to that component of the case only pending the *D.V.D.* litigation. *See Munaf v. Green*, 553 U.S. 674, 693 (2008) (“prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power”); *see also Cicero v. Olgiati*, 410 F. Supp. 1080, 1099 (S.D.N.Y. 1976) (“Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure.”).¹¹

¹¹ Multiple courts of appeals have upheld dismissals of a case if there is a parallel class action raising the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d 890, 892–93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of [the] complaint which duplicate the [class action’s] allegations and prayer for relief”); *McNeil v. Guthrie*, 945 F.2d 1163, 1165–66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Horns v. Whalen*, 922 F.2d 835, 835 & n.2 (4th Cir. 1991); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th

II. IN THE ALTERNATIVE, THE COURT SHOULD DENY THE TRO

Even if the Court does not dismiss the petition, the Court should still deny the request for a TRO because Petitioner cannot satisfy the factors which warrant that relief. Rule 65 of the Federal Rules of Civil Procedure governs the issuance of TROs and preliminary injunctions—either of which is an “extraordinary remedy, which should be granted only in limited circumstances.” *Novartis Consumer Health, Inc. v. & Johnson–Merck Consumer Pharm. Co.*, 290 F.3d 578, 586 (3d Cir. 2002). To obtain this extraordinary remedy, Petitioner must demonstrate: (1) a likelihood of success on the merits; (2) that he or she will suffer irreparable harm by denial of the relief; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief. *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).

The first two factors are “are the most critical.” *Relly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (quotations omitted). Moreover, where (as here), a petitioner is seeking mandatory injunctive relief disrupting the status quo, such as immediate release from custody, the petitioner must satisfy a “particularly heavy burden” and show a “substantial”—not just reasonable—likelihood of success on the

Cir. 1988) (once a class action has been certified, “[s]eparate individual suits may not be maintained for equitable relief”); *Bennett v. Blanchard*, 802 F.2d 456, 456 (6th Cir. 1986) (affirming dismissal of a case when the plaintiff was a member in a parallel class action); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (since class members generally “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”).

merits and an “indisputably clear” right to relief. *Hope v. Warden York County Prison*, 972 F.3d 310, 320 (3d Cir. 2020); *see also Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024) (“[O]ver and above the showing required to maintain the status quo . . . a plaintiff must show a substantial likelihood of success on the merits and that [one’s] right to relief is indisputably clear[.]” (quotation omitted)). Petitioner fails to make these showings here.

A. Petitioner is Not Substantially Likely to Succeed on the Merits

As set forth above, Petitioner cannot show a likelihood of success on the merits, much less a substantial likelihood. His claims face significant jurisdictional hurdles given that he has not filed the petition in the district of confinement or against his immediate custodian. And he faces other jurisdictional issues under the INA and the REAL ID Act. In addition, the claims fail on the merits, because Petitioner cannot show a violation of either the APA or Due Process Clause. For these reasons, even if the Court does not dismiss the petition, the Court should nevertheless deny the TRO motion because Petitioner cannot show a “substantial likelihood of success on the merits” or right to relief which is “indisputably clear.” *See Kim*, 99 F.4th at 155; *Hope*, 972 F.3d at 320.

B. Petitioner Cannot Establish Irreparable Harm

Petitioner also falls short of establishing that “irreparable injury is likely in the absence of” a TRO. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In his TRO motion, Petitioner identifies two alleged harms which he argues justify the extraordinary emergent relief he seeks: (1) the detention itself, as it

amounts to a “*per se* form of irreparable harm” because it is “prolonged and unlawful”; and (2) concerns over receiving proper medical care to control his HIV while in immigration custody. *See* Pl. Br., at 13-14.

With respect to the former, Respondents have demonstrated that Petitioner’s approximate four-month detention pursuant to a final removal order is neither prolonged nor unlawful. In the 24 months since an immigration judge issued a final order of removal, Petitioner has not filed any applications for relief from removal. Nor has he made any apparent effort to assist in his orderly departure from the United States. Petitioner, moreover, had adequate notice of the conditions of his supervised release, including the specific condition that he “make good faith efforts to secure a travel document” to effectuate his removal, “and provide proof of [such] efforts to ICE.” Release Notification. Petitioner was on notice that he had to make written inquiries “to Embassies or Consulates requesting the issuance of a travel document,” as well as provide ICE with copies of “written responses from the Embassy or Consulate regarding [any such] request[s].” Form I-220B, Order of Supervision (Addendum). Petitioner had two years to comply with these requirements, and multiple opportunities to seek clarification about them or challenge their constitutionality. At bottom, ICE’s actions in this case are nothing more than an attempt to enforce a final order of removal in accordance with the law. There is no constitutional or APA violation, and Petitioner cannot show irreparable harm based on his lawful detention under 8 U.S.C. § 1231.

Petitioner's claim that he will suffer irreparable harm absent an order compelling his release due to concerns over medical care is too speculative to merit issuance of a TRO. *See Moneyham v. Ebbert*, 723 F. App'x 89, 92 (3d Cir. 2018) (explaining irreparable harm must be "actual and imminent, not merely speculative"). According to Petitioner, he has "experienced a lapse in his [HIV] treatment due to numerous transfers between facilities and delays in medical care in detention." Pl. Br., at 14 (citing Pl. Decl., ¶ 19). But Petitioner received his HIV medication on April 10, 2025. *See* Pl. Dec., ¶ 19. And there is no allegation that Petitioner has since had a lapse in medication or is otherwise being deprived of care in immigration custody. Petitioner cannot show immediate irreparable harm based on the speculative claim that he could be denied treatment in the future.

C. An Injunction Would be Contrary to Public Interest

Where, as here, the government is the responding party, the final two factors—balance of the equities and public interest—merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). These factors weigh against granting a TRO in this case. There is a significant public interest in lawful enforcement of the immigration laws. *Id.* Here, as discussed above, the government's detention of Petitioner pending removal is a valid exercise of its authority under the INA and its regulations. And issuing a TRO seeking release—given the absence of a strong showing of success on the merits and immediate irreparable harm—would thwart the "public interest in prompt execution of removal orders." *Id.* at 436. These interests weigh against granting a TRO.

D. The Court Should Require Bond

Rule 65(c) of the Federal Rules of Civil Procedure provides that a court may issue a TRO (or preliminary injunction) “only if the movant gives security” for “costs and damages sustained” by the non-moving party in the event the non-moving party is later found to “have been wrongfully enjoined.” “Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary.” *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 (3d Cir. 1990) (quoting *Frank’s GMC Truck Center, Inc. v. General Motors Corp.*, 847 F.2d 100, 103 (3d Cir.1988), *holding modified by Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421 (3d Cir. 1994)). On March 11, 2025, the President issued a memo requiring federal agencies to seek security when confronted with suits seeking emergency preliminary injunctive relief.¹² Pursuant to that memo, to the extent that the Court grants preliminary injunctive relief in this case, Respondents respectfully request that the Court require Petitioner to provide adequate security.

CONCLUSION

For the foregoing reasons, the Court should dismiss the petition and deny the TRO motion as moot, or, in the alternative, deny Petitioner’s request for a TRO.

Respectfully submitted,

ALINA HABBA
United States Attorney

¹² See White House Memo, Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), <https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/> (last visited Apr. 27, 2025).

By: /s/ David Inkeles
DAVID W. INKELES
Assistant U.S. Attorneys
Attorneys for Respondents

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