IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02059-DDD-STV

HOSSEIN BATOOIE,

Petitioner,

v.

JUAN BALTAZAR, Acting Warden, Aurora ICE Processing Center,
ROBERT GUADIAN, Field Office Director, U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, U.S. Attorney General, U.S. Department of Justice, in their official capacities,

Respondents.

RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 19)

Respondents submit this response to the Court's Order to Show Cause why the Petition for a Writ of Habeas Corpus (ECF No. 1) should not be granted. *See* ECF No. 19. The Petition requests Petitioner's release or a bond hearing based on alleged violations of the Fifth Amendment; 8 U.S.C. §§ 1226(a), 1229a, and implementing regulations; and 8 U.S.C. §§ 1231, 1229a, and implementing regulations. *See* ECF No. 1, ¶¶40-45.

The Petition fails for several reasons. First, Petitioner should not be released or provided a bond hearing because he has a final removal order and is therefore subject to mandatory detention under 8 U.S.C. § 1231(a). While Petitioner questions whether he was actually ordered removed due to "ambiguities on the face of" a summary checklist from the immigration judge who ordered removal, every indicia—including Petitioner's withholding of removal, Respondents' contemporaneous records, the Immigration Court's case tracking system, and Petitioner's own conduct—shows he was ordered removed.

Second, Petitioner argues that Respondents' procedures to effectuate his potential removal to a third country are unconstitutional, but those procedures are already the subject of a nationwide, non-optout class action. *See D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.) (hereinafter *D.V.D.*). As a class member, Petitioner may not bring a separate lawsuit challenging those procedures.

Finally, even if the *D.V.D.* lawsuit did not preclude this case, Petitioner is still in the wrong forum. Congress has vested exclusive jurisdiction for the review of claims, like Petitioner's, that contest a removal order or its execution in the U.S. Court of Appeals. Thus, the Court should not hear Petitioner's claims, and the Petition should be dismissed.

BACKGROUND

I. Legal Framework for Third-Country Removal

Through the Immigration and Nationality Act (INA), Congress has established an "extensive and complex" framework for the "governance of immigration and alien status." *Arizona v. United States*, 567 U.S. 387, 395 (2012). "A principal feature" of that framework is the congressionally established "removal system," which provides "broad discretion exercised by immigration officials." *Id.* at 396.

As relevant here, the INA provides the government with the authority to execute orders of removal. The United States may remove noncitizens to various countries including, where other options are unavailable, any country willing and able to accept them. *See* 8 U.S.C. § 1231(b) (permitting removal to a "country whose government will accept the [noncitizen] into that country" when other options are "impracticable, inadvisable, or impossible"). At the same time, under the Convention Against Torture (CAT), the United States will not remove any noncitizen to a country where the United States has found they are likely to be tortured.

Although the INA authorizes third-country removal, it does not specify any additional pre-removal process that noncitizens must receive under CAT after they receive a final removal order. Congress has delegated the formulation of that process entirely to the Executive Branch. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681–822 (1998) (8 U.S.C. § 1231 note).

II. The *D.V.D.* Nationwide Non-Optout Class Action

In March 2025, four plaintiffs instituted the *D.V.D.* class action challenging their third-country removals. The *D.V.D.* plaintiffs moved for an emergency temporary restraining order, which was granted on March 28, 2025. *See D.V.D.*, ECF No. 34.

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

> All individuals who have a final order of removal. . . whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

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

On June 23, 2025, however, the Supreme Court stayed the remedial portion of the *D.V.D.* court's order. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). The same day, the *D.V.D.* court ordered that its remedial order remained in effect as to eight individual class members DHS sought to remove to South Sudan. *See D.V.D.*, ECF No. 176. Defendants moved to clarify the Supreme Court's Order, and, on July 3, 2025, the Supreme Court granted the motion, allowing the eight individual class members—who were not named plaintiffs—to be removed to South Sudan. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025). But the Supreme Court did not disturb the district court's class certification determination. *See generally id.*

III. Petitioner's Entry into the United States and 2004 Immigration Proceedings

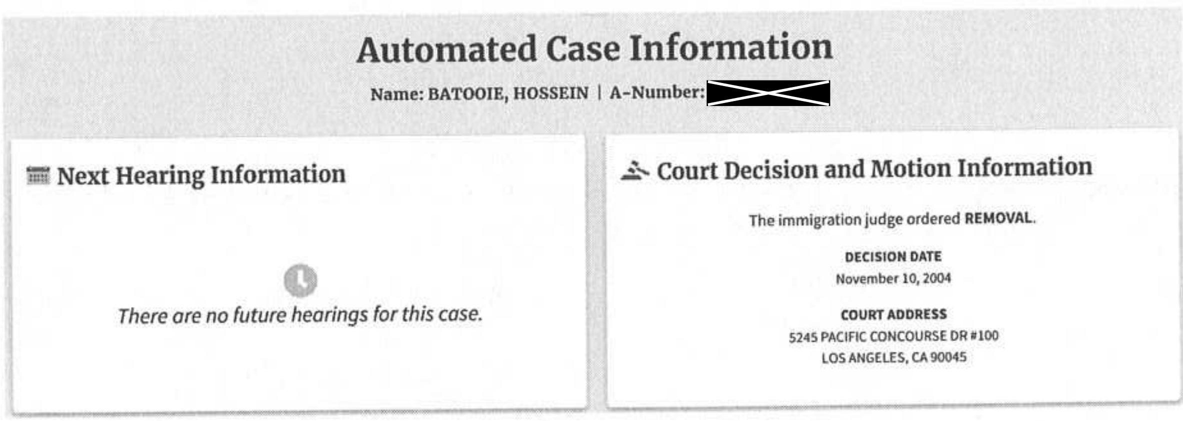
Petitioner is a native and citizen of Iran. ECF No. 24-1 ¶4. In 2000, Petitioner was admitted into the United States on a time-limited K-1 nonimmigrant visa, which he overstayed. *Id.* ¶5-7. Petitioner explains that he sought asylum, claiming fear of harm from the Iranian government. ECF No. 1 ¶11; ECF No. 24-1 ¶¶8-10. His asylum petition was denied. ECF No. 24-1 ¶10.

In 2003, the Bureau of Citizenship and Immigration Services referred Petitioner's case to an Immigration Judge (IJ) and issued a Notice to Appear (NTA). ECF No. 24-1 ¶11. The NTA charged Petitioner with being removable and ordered him to appear at the Los Angeles Immigration Court. *Id.* ¶12. On November 10, 2004, the IJ held a hearing in Petitioner's case. *Id.* ¶15. At the hearing, Petitioner admitted the allegations in the NTA and conceded his removability. *See id.* ¶13.

The IJ summarized his order at the hearing on a form checklist. *See* ECF No. 4-1. The summary has checkmarks indicating that Petitioner's application for withholding was granted, but also that his applications for withholding and for other relief were withdrawn and that the proceedings were terminated. *See id.* at 1. It does not explicitly order Petitioner's removal or designate a country of removal. *Id.* The document also states, however, that it is "a summary of

[an] oral decision" that is "solely for the convenience of the parties," and that "[i]f the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case." *Id.*

Additional records show that the IJ ordered Petitioner's removal.[1] The Immigration Court's public website shows that Petitioner was ordered removed:



EOIR Automated Case Information, *available at*: https://acis.eoir.justice.gov/en/caseInformation/ (last visited Aug. 13, 2025); ECF No. 24-1 ¶18. A DHS file system also contains contemporaneous notes that Petitioner withdrew his application for certain relief from removal and that—consistent with his allegations—the IJ granted withholding of removal. ECF No. 24-1 ¶19; ECF No. 1 ¶¶11-12 (noting that the IJ "granted withholding of removal to an undesignated country").

Finally, during the twenty-plus years after the IJ hearing, Petitioner applied several times for work authorization, which DHS consistently granted under 8 C.F.R. § 274a.12(a)(10). ECF No. 24-1 ¶21. That regulation sets forth who is eligible for work authorization. It has no provision

[1] The parties continue to seek further clarification of Petitioner's 2004 removal order from the Immigration Court and will promptly supplement the record as necessary if they receive further relevant information.

for those whose removal proceedings were terminated. 8 C.F.R. § 274a.12. Petitioner was granted work authorization as a noncitizen "granted withholding of deportation or removal." *Id.*

IV. The Petition

On June 22, 2025, U.S. Immigration and Customs Enforcement (ICE) officers took Petitioner into custody for potential removal to a third country under 8 U.S.C. § 1231 and 8 C.F.R. § 1208.16(f). ECF No. 24-1 ¶22. On July 2, 2025, Petitioner filed his Petition. *See* ECF No. 1. He claims that the "statutory authority for [DHS] to detain and deport [him] is unclear due to ambiguities on the face of [the] 2004 [IJ] Order," but that "under all possible interpretations, [DHS]'s legal authority to detain and deport [him] is unlawful." *Id.* at 1. He argues that his detention and potential third-country removal violate the INA and his due-process rights. *See id.* ¶¶40-45. He asks the Court to declare his detention and removal unlawful and order either his immediate release or a bond hearing before an IJ. *See id.* at 13 (Prayer for Relief).

ARGUMENT

The Petition should be dismissed or denied. *First,* Petitioner is subject to a final removal order, so his detention is mandatory. *Second*, Petitioner is a member of the *D.V.D.* class, and so he cannot bring his own separate lawsuit. And *third*, even absent a class action, this Court lacks jurisdiction to hear claims, like Petitioner's, that attack the validity of his removal order and Respondents' actions to execute it.

I. Petitioner is subject to a final removal order, and so federal law requires Respondents to detain him.

When a noncitizen is "subject to a final order of removal," the "detention is governed by 8 U.S.C. § 1231." *Mirza v. Dep't of Homeland Sec. Ice*, No. 22-cv-02610-DDD, 2023 WL 2664860, at *3 (D. Colo. Jan. 10, 2023). Under § 1231, "the Attorney General shall detain the alien" during a 90-day removal period. 8 U.S.C. § 1231(a)(2). After that 90-day removal period, the government "has discretion to detain inadmissible or criminal aliens," but that detention "may not be indefinite." *Mirza*, 2023 WL 2664860, at *2 (citation omitted)).

Here, Petitioner does not argue that he has been indefinitely detained—indeed, he has been detained less than 60 days. Instead, he contends that he is not subject to a final removal order, rendering his detention unlawful.

Petitioner is incorrect. The existing record demonstrates that Petitioner is currently subject to a final removal order and, as a result, his detention is mandatory.

First, the IJ granted Petitioner withholding of removal, ECF No. 4-1, which "necessarily requires the IJ to have already determined that the alien is deportable." *Lolong v. Gonzales*, 484 F.3d 1173, 1177 (9th Cir. 2007). Put differently, "as a matter of logic, a finding of removal must precede a withholding of removal…. Therefore, despite failing to check the box that 'respondent was ordered removed,'" the IJ "necessarily made the finding that" Petitioner is "deportable" when granting withholding of removal in 2004. *Ali v. Beers*, 988 F. Supp. 2d 89, 93 (D. Mass. 2013); *see also Cruz-Camey v. Gonzales*, 504 F.3d 28, 30 (1st Cir. 2007) (endorsing idea that "IJ's order canceling removal implicitly includes a *threshold* determination that the petitioner is otherwise subject to removal").

Second, Petitioner conceded before the IJ that he is removable. *See* ECF No. 24-1 ¶13. That "concession of removability is enough to amount to a finding of removal by the IJ and a grant of discretionary relief like the one here necessitates an inherent finding of removability." *Sapunxhiu v. Mukasey*, No. 06-cv-3975-JLL, 2008 WL 360984, at *4 (D.N.J. Feb. 8, 2008).

Third, the Immigration Court's own website confirms that "[t]he immigration judge ordered **REMOVAL**." ECF No. 24-1 ¶18. Concluding otherwise would thus conflict with the Immigration Court's own records.

Finally, Petitioner's own actions reflect that he is, and has been, subject to a final removal order. For twenty-plus years, Petitioner applied for, and the DHS granted, work authorization under regulations applicable only to those individuals who have a final removal order but were granted withholding of removal. *See* ECF No. 24-1 ¶21; *see also* 8 C.F.R. § 274a.12(a)(10). Therefore, for the past twenty years, Petitioner appears to have also understood that he is subject to a final removal order.

Petitioner tries to attack his removal order by pointing to a 2008 BIA decision, but that authority does not change the result. *See* ECF No. 1 ¶18 (citing *Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008)). As an initial matter, and as explained below, purported defects in a removal order are an issue for the U.S. Court of Appeals, not this Court. *See* 8 U.S.C. § 1252(a)(5). Moreover, Petitioner does not explain how a 2008 BIA decision could apply retroactively to a 2004 removal order. *See Ali*, 988 F. Supp. 2d at 93 n.4 (declining to retroactively apply *Matter of I-S- & C-S-* to an earlier-issued removal order). Indeed, the BIA based its ruling in part on 2007 regulations that did not exist in 2004. *Compare Matter of I-S- & C-S-*, 24 I&N Dec. at 433 (discussing 8 C.F.R. § 1240.12(d) (2007)) *with* 8 C.F.R. § 1240.12 (2004) (containing no subsection (d)). And in any event, all that is required for an order of removal is "an order … concluding that the alien is deportable." 8 U.S.C. § 1101(a)(47). As noted above, Petitioner's concession of removability is enough to fit that definition.

Petitioner also suggests his removal order is invalid because the IJ did not say what country the withholding order applies to. ECF No. 1 ¶35. But there was no regulation in 2004 requiring the IJ to be so explicit. *See generally* 8 C.F.R. § 1240.12 (2004) (containing no requirement to identify a country of removal). And either way, Iran is the only country Petitioner ever expressed a fear of returning to in 2004. ECF No. 1 ¶11.

For all these reasons, Petitioner is subject to a final removal order and, thus, mandatory detention under 8 U.S.C. § 1231.

II. Petitioner is a member of the *D.V.D.* non-optout class, and so he cannot bring a separate lawsuit challenging the procedure for his removal.

As noted above, the *D.V.D.* court certified a class consisting of "[a]ll individuals who have a final order of removal … whom DHS … will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed." *D.V.D.*, ECF No. 64 at 23. Because Petitioner has a final removal order and is set for removal to a previously undesignated, unidentified country, he is a member of the *D.V.D.* class and cannot litigate his own separate claims for injunctive relief.

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

Thus, as the Tenth Circuit has observed in the prison context, "[i]ndividual suits for injunctive and equitable relief . . . cannot be brought where there is an existing class action." *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991); *see also Moore v. Hickenlooper*, 723 F. App'x 582, 586 (10th Cir. 2018) ("We have approved a protocol that prevents individual claimants from pursuing their own equitable claims relating to a class action while the class action is proceeding."). Similarly, the Eighth Circuit has explained:

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

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

Here, because Petitioner is a member of the *D.V.D.* non-optout class, the Court should dismiss this action to the extent Petitioner challenges the procedure for his third-country removal. As this Court has recognized, it is inappropriate to grant separate injunctive relief to a *D.V.D.* class member when relief is available in the class-action forum. *See* Order, *J.P.P. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-1048-DDD-TPO (D. Colo. Apr. 2, 2025), ECF No. 15 (denying temporary restraining order (TRO) because the since-stayed *D.V.D.* nationwide injunction provided plaintiff relief as a *D.V.D.* class member); *see also I.V.I. v. Baker*, No. 25-cv-1572-JKB, 2025 WL 1519449, at *2 (D. Md. May 27, 2025) (denying TRO and granting motion to dismiss claims concerning "the propriety of [petitioner's] removal to a third country" because "the proper forum for the core of Petitioner's claims is the" *D.V.D.* class action).

Thus, to the extent Petitioner challenges third-country removal procedures, the Court should dismiss the Petition given the pending *D.V.D.* proceedings.

III. The Court otherwise lacks jurisdiction to hear claims, like Petitioner's, that attack the validity of a removal order or Respondents' actions to execute it.

As noted above, Petitioner challenges the existence of his removal order and the procedures to execute that removal order via third-country removal. ECF No. 1, ¶¶34, 37. The INA, however, deprives this Court of jurisdiction to address those challenges. First, to the extent Petitioner challenges the existence of his removal order, the INA provides that only courts of appeals, not district courts, may review challenges to an order of removal. *See* 8 U.S.C. § 1252(a)(5). Second, to the extent he challenges the execution of that removal order, the INA precludes review of execution of removal orders. *See* 8 U.S.C. § 1252(g).

Petitioner first contends that he does not have a valid final removal order to justify his detention under 8 U.S.C. § 1231. But Congress has said that the "sole and exclusive" means of "judicial review of an order of removal" is in the "appropriate court of appeals":

> 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, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e).[2]

8 U.S.C. § 1252(a)(5) (emphasis added).

[2] Subsection (e) does not apply in this case.

Habeas challenges to orders of removal are thus barred by § 1252(a)(5). *See Gonzales-Alarcon v. Macias*, 884 F.3d 1266, 1275 (10th Cir. 2018) (ruling that § 1252(a)(5) barred relief on a habeas challenge to a removal order); *Thoung v. United States*, 913 F.3d 999, 1001-02 (10th Cir. 2019) (ruling that a habeas petition seeking to invalidate a removal order was barred). Section 1252(a)(5) specifically excludes from this Court's jurisdiction habeas petitions like the one Petitioner brings here.[3] *See Berrum-Garcia v. Comfort*, 390 F.3d 1158, 1162 (10th Cir. 2004) (district court properly determined that it lacked jurisdiction over a habeas petition raising "statutory and due process claims" related to a removal order and a "challenge [to] the validity of [the underlying] removal order").

The bar on district-court habeas jurisdiction applies even if the habeas petition asserts a constitutional challenge because Congress has granted courts of appeals jurisdiction to review constitutional questions through petitions for review. That is, Section 1252(b)(9) gives the courts of appeals exclusive jurisdiction to consider *all* questions of law and fact, including constitutional and statutory issues like Petitioner brings here:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

[3] The displacement of jurisdiction by § 1252(a)(5) also applies to Petitioner's invocation of 28 U.S.C. § 1331 and the Suspension Clause because they are "provisions of law" or a "habeas corpus provision." Furthermore, the Suspension Clause is a limitation, not a grant of jurisdiction.

28 U.S.C. § 1252(b)(9); *see also Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (noting that the statute "broadened the scope of exclusive review in the circuit courts of appeal to include all questions of law and fact arising from any action or proceeding brought to remove an alien").

Finally, § 1252(a)(5)'s command that the courts of appeals are the exclusive courts with jurisdiction to consider such challenges does not depend on whether the challenge in the court of appeals would be procedurally proper or ultimately successful. There are limits on when petitions for review can be filed in the court of appeals. *See Gonzalez-Alarcon*, 884 F.3d at 1271, 1275 (observing that a "petition for review must be filed within thirty days of a final order of removal" and discussing that these time limitations apply even if the petition presents constitutional challenges). But those limits do not affect § 1252(a)(5)'s elimination of district-court jurisdiction over such challenges.

Petitioner also contends that, even assuming a valid removal order exists, Respondents must follow certain processes during the execution of that removal order. Section 1252(g), however, precludes review of Petitioner's contention: "no court shall have jurisdiction to hear any cause or claim by … any alien arising from the decision or action by [ICE] to … *execute removal orders against any alien.*" 8 U.S.C. § 1252(g) (emphasis added). The Tenth Circuit has made clear that § 1252(g) bars claims that are "connected *directly and immediately*" to execution of a removal order. *Namgyal Tsering v. U.S. Immigr. & Customs Enf't*, 403 F. App'x 339, 343 (10th Cir. 2010) (citation omitted). Courts in this District have thus applied § 1252(g) to preclude a variety of challenges to execution of removal orders. *See, e.g.*, *Sixing Liu v. Choate*, No. 18-cv-02801-LTB, 2018 WL 10466845, at *4 (D. Colo. Nov. 13, 2018) ("request to compel the Government to remove him from the United States without delay" barred by § 1252(g)); *Mohamed v. Napolitano*, No. 11-

cv-01803-WJM-CBS, 2012 WL 1229929, at *2 (D. Colo. Apr. 12, 2012) (challenge to execution of removal despite stayed order barred by § 1252(g)), *aff'd*, 511 F. App'x 763 (10th Cir. 2013).

In sum, § 1252(a)(5) and (g) bar district-court jurisdiction over the Petition. The appropriate court of appeals—here, the Ninth Circuit—would have exclusive jurisdiction over any challenge by Petitioner to the flaws he claims affected his removal order. *See id.*

CONCLUSION

Petitioner was ordered removed in 2004. He has had twenty years to reopen the order and seek a stay of removal to any country to which he allegedly fears return. Instead, he received work authorization based on his status as a noncitizen who was ordered removed and granted withholding of removal. Petitioner's failure to seek relief does not, however, give this Court jurisdiction to consider his request in the context of a habeas petition, especially when another court is hearing a class action on the same issues. To the contrary, Congress explicitly stripped district courts of jurisdiction over the issues Petitioner raises. Accordingly, Petitioner's claims fail.

The Petition should be dismissed or denied. In doing so, the Court should also dissolve its TRO extended on July 24, 2025. *See* ECF No. 25.

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Dated: August 13, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Counsel for Respondents hereby certifies that the foregoing pleading complies with the type-volume limitation set forth in DDD Civ. P.S. III(A)(1).

CERTIFICATE OF SERVICE

I certify that on August 13, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following recipients by e-mail:

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

none.

s/ V. William Scarpato III
V. William Scarpato III