UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

A.M.H., *Petitioner*, v. Warden, STEWART DETENTION CENTER, et al., *Respondents*.	Case No. 4:26-cv-719-CDL-AGH

REPLY IN SUPPORT OF AMENDED PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW Petitioner A.M.H., through counsel ("Petitioner"), and submits his reply to the Response filed by Respondents on July 17th, ECF Doc. 12.

I. Petitioner's Amended Petition must be granted as to Counts I and II, because Respondents have failed to carry their burden of showing a significant likelihood of removal to Cuba in the reasonably foreseeable future.

Petitioner explains below (A) why Cuba is the only lawful country of removal; (B) why Respondents have the burden of showing a significant likelihood of removal to Cuba in the reasonably foreseeable future; and (C) why Respondents have failed to carry their burden.

A. Removal to any country that is not Cuba is barred based on U.S. Supreme Court precedent.

The Supreme Court has prescribed a specific sequence by which third country removals must unfold. The holding in *Jama v. Immigration and Customs Enforcement* is that, in accordance with 8 U.S.C. § 1231(b)(2), ICE need not obtain advance consent of the country where a noncitizen was born before effecting removal to that country. 543 U.S. 335 (2005). On the road to that conclusion, Justice Scalia explained how section 1231(b)(2) works:

> The statute thus provides four consecutive removal commands: (1) An alien shall be removed to the country of his choice (subparagraphs (A) to (C)), unless one of the conditions eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen (subparagraph (D)), unless one of the conditions eliminating that command is satisfied; (3) otherwise he shall be removed to one of the countries with which he has a lesser connection (clauses (i) to (vi) of subparagraph (E)); or (4) if that is "impracticable, inadvisable, or impossible," he shall be removed to "another country whose government will accept the alien into that country" (clause (vii) of subparagraph (E)).

Id. at 341. Importantly, the government "is directed to move on to the fourth step *only if* it is 'impracticable, inadvisable, or impossible to remove the alien to each country described in' the third step." *Id.* at 342 (emphasis supplied). *See also Condecore v. Blanche*, Case No. 6:26-cv-1510-CEM-LHP, 2026 WL 2034638, *1 (M.D. Fla. July 14, 2026)(under *Jama*, third country removal permissible "[o]nly where [steps 1-3] are 'impracticable, inadvisable, or impossible'"); *D.V.D. v. U.S. Dep't of Homeland Sec.*, 821 F.Supp.3d 102, 144 (D. Mass. 2026)(same), *stayed pending appeal*, No. 26-1212 (1st Cir. Mar. 16, 2026).

Based on the foregoing, Respondents cannot remove Petitioner to Mexico or any other third country while at the same time maintaining, Response at 5, that "ICE/ERO continues active efforts to effectuate Petitioner's removal to Cuba." Put another way, Respondents' position is that removal to Cuba is not "impracticable, inadvisable, or impossible." This means they are not yet at *Jama* step four. *See Jama*, 543 U.S. at 703 ("*[I]f [ICE] is unable to secure an alien's removal at the third step*, all that is left is the last resort provision allowing removal to a country with which the alien has little or no connection—if a country can be found that will take him.")(emphasis supplied). Cuba, accordingly, is the only country to which Respondents can lawfully remove Petitioner at this time.

B. It is Respondents' burden to show a significant likelihood of removal to Cuba in the reasonably foreseeable future.

On December 14, 2023, Respondents released Petitioner from custody on an Order of Supervision ("OSUP") pursuant to 8 C.F.R. § 241.13, a regulation that predicates release on there being no significant likelihood of removal in the reasonably foreseeable future (herein, a "SLRRFF"). Amended Petition at ¶¶ 14-16, 39, 42, 48-49; Response, Exh F. Respondents do not dispute that 8 C.F.R. § 241.13 was the basis for Petitioner's release in 2023. Accordingly, they now have the burden of establishing a SLRRFF. *See T.C.T. v. Warden, Stewart Detention Center*, Case No. 4:25-cv-373-CDL-CHW, 2025 WL 4648417, *2, 4 (M.D. Ga. Dec. 22, 2025)("Because 8 C.F.R. § 241.13(i) applies to Petitioner,... the burden shifts to Respondent to show that there is a [SLRRFF]."), *report and recommendation adopted in part, rejected in part*, 2026 WL 493471 (M.D. Ga. Feb. 23, 2026)(herein, *T.C.T.*). *See also Thuy v. Streeval*, Case No. 1:26-cv-00633-VMC-JEM, 2026 WL 1379587, *3, 5 (N.D. Ga. May 18, 2026)(placing burden of proof on ICE).

C. Respondents have not met their burden of showing a SLRRFF to Cuba.

September 12th will mark two years since Respondents first requested travel documents from Cuba. ECF Doc. 12-2 ("Scott Decl. I") at ¶ 10; ECF Doc. 12-1 ("Scott Decl. II") at ¶ 10. How have circumstances changed such that there is now a SLRRFF?

They have not, based on Officer Scott's declarations. The only news is that on January 4, 2026, "ICE/ERO nominated Petitioner to be repatriated to Cuba." Scott Decl. II at ¶ 13. What this means is unclear. Is it similar to a request for travel documents? If not, when will travel documents be requested (again)? How long after that request is made do Respondents expect a response from the Cuban government? Is Cuba even accepting those who, like Petitioner, have criminal convictions?

Respondents offer no answers. And at this point, with Petitioner having surpassed, on July 10th, twelve consecutive months in detention, that means there is no SLRRFF. *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001)("[F]or detention to remain reasonable, as the period of prior postremoval [*sic.*] confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink.").[1]

II. Petitioner's Amended Petition must be granted as to Counts I and II, because even assuming without conceding they have arrived at *Jama* step four and can proceed with third country removal, Respondents cannot show a SLRRFF to Mexico or to the unnamed third country referenced in the Response.

As to Mexico, the facts here are distinguishable from those of *C.R.L. v. Dickerson*, Case No. 4:25-cv-175 (CDL), 2025 WL 1800209 (M.D. Ga. June 30, 2025), in which Judge Land found the Cuban petitioner's "original *Zadvydas* claim" to be "moot in light of his imminent removal to Mexico." In *C.R.L.*, the petitioner's deportation to Mexico was assumed inevitable and unimpeded, even though he, just like Petitioner here, did not consent to going there. *See C.R.L.*, 2025 WL 1800209 at *1 (noting petitioner "objects to being sent [to Mexico]").

Our facts are different. Respondents have not directly addressed Petitioner's assertion, Amended Petition at ¶ 25, that Mexico refused to accept him for deportation not because he refused to consent, but instead because of his age and health issues. Officer Scott declares Petitioner

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[1] For examples of government action sufficient to show a SLRRFF, *compare Thuy*, 2026 WL 1379587 at *5-6 (no SLRRFF where ICE provided no "information about how many requests [for travel documents] are denied, or pending awaiting a response from Vietnam"), *with T.C.T.*, 2025 WL 4648417 at *6 (SLRRFF where ICE officer's declaration detailed concrete steps taken and also explained that "[s]ince February 2025, Vietnam has issued a [travel document] in response to every request submitted by ICE"), *and V.H.N. v. Warden, Stewart Detention Center*, Case No. 4:25-cv-514-CDL-CHW, 2026 WL 1127847, *3 (M.D. Ga. Mar. 4, 2026)(SLRRFF where ICE officer's declaration provided number of Vietnamese nationals removed to Vietnam during fiscal year and also averred "that ICE/ERO ha[d] sent a travel document request form to ERO headquarters and that in 2026 travel documents ha[d] been issued with [*sic.*] 30 days from presenting the request to the government of Vietnam")(internal quotes omitted).

"refused to exit [the] holding room" once Respondents transferred him to a detention facility on the U.S.-Mexico border. Scott Decl. II at ¶ 18. But even assuming that were true, it does not foreclose the possibility that Petitioner's health issues, Amended Petition at ¶ 12, were determinative.[2] Neither can Respondents claim that such conduct suspends the removal period under 8 U.S.C. § 1231(a)(1)(C). Refusing to go voluntarily to a country where Petitioner, a 62-year-old man with serious medical issues, has no connections and knows no one is quite different from, say, refusing to complete a passport application. *See Rivero-Tapanes v. Rokosky*, Case No. CV-26-01542-PHX-RM (CDB), 2026 WL 1469826, *4 (D. Ariz. May 26, 2026)(contrasting petitioner's "refus[al] to affirmatively agree to his removal to a third country to which he has no ties" with "obstructionist conduct" in other cases where removal period was suspended).

In any event, mere lines after asserting (without evidence, *see* footnote 2) that Petitioner's "refus[al] to comply" alone thwarted his deportation to Mexico, Respondents reverse course, claiming that Petitioner's consent is in fact *not* required for deportation to Mexico. Response at 4 ("ICE's service of the removal notice [to Mexico], scheduling of removal [to Mexico], and transfer [of Petitioner] for execution [of removal to Mexico] confirm that his consent was neither sought nor required."). If that is true, it makes good sense, and is consistent with Petitioner's medical issues being the reason he is not today in Mexico.[3]

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[2] Respondents state that "ICE/ERO returned Petitioner to Stewart *solely* because of [his] refusals" to consent to go to Mexico. Response at 4 (emphasis supplied). As support, they cite to paragraph 19 of Scott Decl. II. This is a non sequitur. Officer Scott states only that "[o]n February 27, 2026, ICE/ERO transferred Petitioner from El Paso, Texas, back to the Stewart Detention Center in Lumpkin, Georgia." *Id.* (citing Scott Decl. II at ¶ 19).

[3] At least one other district judge has wondered about this supposed requirement that third country deportation to Mexico requires noncitizen consent. *See Tojin-Lux v. Lyons*, Case No. 26-cv-01868-PAB, 2026 WL 1469200, *3 n.3 (D. Colo. May 26, 2026)("Officer Quinones states that petitioner refused to sign the Notice of Removal to Mexico. Respondents do not explain why petitioner's refusal to sign the Notice means that they cannot effect his removal.")(docket citations omitted).

Finally, Respondents have failed to show a SLRRFF to the unnamed third country "covered by a recently adopted removal agreement." Response at 5. This country, according to Respondents, "has provided diplomatic assurances that individuals removed under the agreement will not be persecuted or tortured, and the Department of State has deemed the assurances credible." *Id.* Respondents claim "Petitioner presents no evidence that removal under this agreement is unlikely or foreclosed," *id.*, but it is not Petitioner's burden to do so. *See T.C.T.*, 2025 WL 4648417 at *2. And in any event—what agreement? With which country? *See Perez v. Florida Soft Side South Detention Center*, Case No. 2:26-cv-1442-KCD-DNF, 2026 WL 1487656, *2 (M.D. Fla. May 28, 2026)("The record offers no documents, no diplomatic agreements, and no concrete evidence that Perez will be removed in the near future. Instead, the Government extends hope and a placeholder. It relays an assertion from ICE that the agency is working towards executing a third-country removal to Mexico, but Perez has refused to comply. But there are no details about his noncompliance, or anything else for that matter. Because the Government offers nothing to suggest removal to Mexico, or anywhere else, is more likely now than it was decades ago, Perez must be released.")(internal citations omitted).[4]

III. The Amended Petition must be granted as to Count III, because Petitioner has a due process right to a meaningful opportunity to contest third country removal.

Petitioner addresses below (A) the Court's jurisdiction over this claim and (B) the legal basis, including the Due Process Clause of the Fifth Amendment, for requiring he receive a meaningful opportunity to object to third country removal.

[4]Although the Response does not disclose a specific third country, on July 15th Officer Scott served Respondent with a document titled "Notice of Removal" that states in relevant part: "This letter is to inform you that [ICE] intends to remove you to Rwanda." A true and correct copy of this document is attached as **Exhibit 1**. *See also* **Exhibit 2** (undersigned counsel's declaration under penalty of perjury).

A. Jurisdiction is not barred by 8 U.S.C. § 1252 or any other provision of law.

Respondents argue against jurisdiction on two different bases: (1) that Petitioner's claim "do[es] not implicate the legality of his current custody and [is] not cognizable in habeas"; and (2) that Petitioner's claim "concern[s] procedures ICE/ERO may use while executing removal" and therefore runs afoul of *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), a decision which—Respondents claim—instructs that "habeas cannot be used to restrain execution of removal orders." Response at 6. Petitioner addresses each of Respondents' arguments in turn.

First, the Supreme Court decided last year that habeas is the proper vehicle for a detained noncitizen's procedural due process challenges. In *Trump v. J.G.G.*, 604 U.S. 670 (2025), Venezuelan nationals detained under the Alien Enemies Act ("AEA") sued in the D.C. district court seeking injunctive relief against summary removal without process. *J.G.G.*, 604 U.S. at 671. The Court vacated the district court's TRO, finding the detainees' claims had to brought in Texas, where they were confined, and in a habeas petition:

> *Regardless of whether the detainees formally request release from confinement*, because their claims for relief necessarily imply the invalidity of their confinement and removal under the AEA, their claims fall within the core of the writ of habeas corpus and thus must be brought in habeas. And immediate physical release [is not] the only remedy under the federal writ of habeas corpus.

Id. at 672 (emphasis supplied)(internal quotes and citations omitted). Based on *J.G.G.*, Petitioner's claim is not a "collateral procedural complaint" that falls outside habeas jurisdiction, as Respondents contend. Response at 6. Indeed, Respondents do not address or otherwise mention *J.G.G.*, and the sole case they do cite is inapposite. *Id.* (citing *Arnaiz v. Warden, Fed. Satellite Low*, 594 F.3d 1326 (11th Cir. 2010)(holding federal prisoner convicted of money laundering cannot use habeas to seek relief from restitution part of sentence)).

Second, jurisdiction is not barred under 8 U.S.C. § 1252(g) or any other part of section 1252. Respondents contend subsection (g) applies here because Petitioner's claim "concern[s] procedures ICE/ERO may use while executing removal—not whether ICE/ERO has statutory authority to detain him." Response at 6. But his unlawful detention is *exactly* what Petitioner challenges:

> Post-order detention is meant to facilitate the noncitizen's removal. *See Zadvydas*, 533 U.S. at 690. It follows, then, that if Petitioner's removal to a third country is effected in violation of his due process rights—that is, without the opportunity to contest it—his post-order detention is illegal. This due process claim "necessarily impl[ies] the invalidity of [Petitioner's] confinement and removal" to a third country not yet named in any removal order. *J.G.G.*, 604 U.S. at 672.

Amended Petition at ¶ 65. Petitioner no more contests Respondents' right "to commence proceedings, adjudicate cases, or execute removal orders," *see* section 1252(g), than did the Venezuelan detainees in *J.G.G.*, whose claims the Supreme Court found cognizable in habeas. Jurisdiction on these facts is supported by precedent not only of the Eleventh Circuit, *see Madu v. U.S. Atty. Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006), but this very Court as well. *See E.D.Q.C. v. Warden, Stewart Detention Center*, 789 F.Supp.3d 1234, 1240-41 (2025)(relying on *Madu* to conclude section 1252 does not bar challenge to legality of post-order detention).[5]

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[5] As an alternate basis for concluding section 1252(g) does not bar jurisdiction, *see D.J.R.R. v. Genalo*, Case No. 26-CV-3124 (AMD), 2026 WL 1746716, *4 (E.D.N.Y. Jun. 17, 2026)("The petitioner's final removal order is to Nicaragua. He does not have a removal order to any other country, including Mexico, where the government says it intends to send him. Because the petitioner is not challenging his removal to Nicaragua, [s]ection 1252(g) does not bar the Court from reviewing his claims."); *Ortega v. Kaiser*, Case No. 25-cv-05259-JST, 2025 WL 2243616, *3 (N.D. Cal. Aug. 6, 2025)("Ortega does not challenge the execution of the final removal order entered against him, which provided for his removal *only to El Salvador* and deferred his removal there in light of his CAT claim. Instead, Ortega challenges his potential detention or removal to a country *other* than El Salvador, for which there currently exists no final removal order.")(emphasis in original).

And in any event, if Petitioner indeed is "entitled to notice and opportunity to be heard appropriate to the nature of the case," *J.G.G.*, 604 U.S. at 673, where, if not this Court, is he expected to assert his rights in that respect?

Not before the immigration court, as the time to file a motion to reopen—"within 90 days of the date of entry of a final administrative order of removal," 8 U.S.C. § 1229a(C)(i)—has long passed. The deadline admits of no exceptions applicable here. *See* 8 U.S.C. § 1229a(C)(ii) (motions to reopen seeking relief under 8 U.S.C. § 1231(b)(3) not time-limited, but must be "based on country conditions arising in the country of nationality or the country to which removal has been ordered"). *See also D.V.D..*, 821 F.Supp.3d at 134-35 (characterizing as "misstatement" government's claim that "Plaintiffs may—at any time—move to reopen proceedings to assert new fear claims regarding removal to a third country"); *Dia v. Raycraft*, Case No. 1:26-cv-1054, 2026 WL 1476507, *4 (S.D. Mich. May 27, 2026)("The government's argument that Dia should present his claim to a court of appeals would be more persuasive if it could articulate a path for Dia to do so.").

Based on the foregoing, there are no jurisdictional obstacles to the Court's consideration of Count III. Nonetheless, for the sake of completeness, Petitioner will address *C.R.L. v. Dickerson*, *supra* at 4, in which Judge Land found he lacked jurisdiction to address the Cuban petitioner's challenge to deportation to Mexico.

C.R.L. is distinguishable from the facts at bar. Judge Land's decision was based at least in part on ICE having "provided [the petitioner] with a meaningful opportunity to object to [ ] removal [to Mexico]." *C.R.L.*, 2025 WL 1800209 at *2. The decision's footnote 4 states:

> Respondents provided this opportunity pursuant to a preliminary injunction issued by a Massachusetts district judge in the case of *D.V.D. v. U.S. Dep't of Homeland Sec.*, 1:25-cv-10676, 2025 WL 1142968 at *25 (D. Mass. Apr. 18, 2025). While this process was being exercised, the Massachusetts district court's preliminary injunction upon which the

> process was based was stayed by the United States Supreme Court. *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (U.S. June 23, 2025). In light of this stay, Respondents take the position that they are no longer bound by the Massachusetts district court injunction, but they have not decided whether they will continue to follow that process for Petitioner. Notwithstanding the lack of any commitment by Respondents regarding the process going forward, Petitioner has taken advantage of the process by filing a petition with the immigration court in Texas to reopen his case, so that he can contest his removal to Mexico. In Alice in Wonderland terms, this case just gets "curiouser and curiouser." Lewis Caroll, Alice's Adventures in Wonderland 15 (1865).

Even with the benefit of footnote 4, what exactly the petitioner's "meaningful opportunity to object" consisted of remains unclear. One interpretation is that ICE provided the full process due under the circumstances—a "reasonable fear" screening plus immigration judge review—prior to the *D.V.D.* injunction being stayed. Another interpretation is that Judge Land considered "a meaningful opportunity to object" the petitioner's having filed a motion to reopen with the immigration court.

Whatever was meant by "a meaningful opportunity to object," it is undisputed that, here, Petitioner has received no process at all. Accordingly, if the first interpretation of *C.R.L.*'s footnote 4 is the correct one, it stands to reason Judge Land would find jurisdiction on these facts. If, on the other hand, Judge Land was referring to the motion to reopen, the issue is whether the record and arguments presented reflected the futility of pursing this avenue where the 90-day deadline has passed. In either case, *C.R.L.* is not a basis to decline jurisdiction over Count III.[6]

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[6] Petitioner's research reflects that only one other district judge has declined to find jurisdiction over a claim that third country deportation without process is unlawful. *See Turcios v. Oddo*, Case No. 3:25-cv-0083, 2025 WL 1904384, *3-5 (W.D. Pa. July 10, 2025).

B. *The overwhelming consensus of courts around the country is that Respondents' policy of relying on non-individualized, blanket assurances from third countries that noncitizens will not be subject to persecution or torture is unlawful.*

"[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 678. Due process is not a static concept, so noncitizens "are entitled to notice and opportunity to be heard appropriate to the nature of the case." *J.G.G.*, 604 U.S. at 673. Relevant here, a noncitizen cannot be removed to a country where his life or freedom would be threatened on account of a protected ground. 8 U.S.C. § 1231(b)(3)(A). Neither can he be sent somewhere he will be tortured. *See Sagastizado v. Noem*, 802 F.Supp.3d 992, 1004 (S.D. Tex. 2025)(citing regulations implementing U.S. obligations vis-à-vis Convention Against Torture). Notwithstanding this, no statute or regulation provides procedures by which a noncitizen like Petitioner, ordered removed to one country, can meaningfully contest his deportation to a another, "third" country. *See id.* at 1009 ("Both Respondents and Petitioner acknowledge that neither the INA nor current federal regulations provide for any process for removal of a noncitizen to a third country after a grant of withholding of removal."). So, what process is due Petitioner?

Certainly something more than what Respondents offer, which is this: a deportation officer's declaration that the State Department has found "credible" an unnamed third country's "diplomatic assurances that aliens removed pursuant to [an undisclosed] third-country removal agreement will not be persecuted or tortured" in the unnamed third country.[7] Scott Decl. II at ¶ 24. As one district judge recently concluded, "[s]uch a process does not fit with § 1231, which

[7] Upon information and belief, Mexico has provided no assurances that noncitizens deported there will be safe from persecution and torture. Nonetheless, despite his continuing objections to being removed there (**Exh. 2** at ¶ 6; Amended Petition at ¶ 22), Petitioner has not been referred for a reasonable fear interview.

expressly ties DHS's decision [under § 1231(b)(3)(A)] to the 'life or freedom' of '*the* alien' to be removed, not to the life or freedom of noncitizens generally." *Dia v. Raycraft*, Case No. 1:26-cv-1054, 2026 WL 1476507, *7 (W.D. Mich. May 27, 2026)(emphasis in original). Likewise, the right (or not) to protection under the Convention Against Torture (the "CAT") requires an individualized determination. *See D.V.D.*, 821 F.Supp.3d at 156 (the relevant CAT regulation "does not permit generalized, country-wide, 'blanket' assurances, as provided in the March Guidance").

Based on the foregoing, Petitioner has an interest in not being sent to a third country without a meaningful opportunity to raise fear-based claims related to that country. Avoiding persecution and torture surely weighs heavily in the first of the three factors prescribed by the Supreme Court for assessing whether procedural protections are constitutionally sufficient. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)(first factor is "the private interest that will be affected by the official action"). The second *Mathews* factor, "the risk of an erroneous deprivation of [the] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," also favors Petitioner. Reliance on a country's generalized, "blanket" assurances of safety, without soliciting Petitioner's input or considering his individual characteristics, is no process at all. The third and final *Mathews* factor is "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Petitioner seeks additional process in the form of a reasonable fear screening plus immigration judge review of any negative determination.[8] This additional process would create minimal delay, and is consistent with the

[8] In other words, no more process than that provided to the noncitizen in *Dep't of Homeland Security v. Thuraissigiam*, who "attempted to enter the country illegally and was apprehended just 25 yards from the border." 591 U.S. 103, 107 (2020)(no habeas review of IJ affirmance of

"public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Sagastizado*, 802 F.Supp.3d at 1013 (quoting *Nken v. Holder*, 556 U.S. 418, 436 (2009))

Courts overwhelmingly agree that relying on third countries' generalized assurances that deported noncitizens will not be persecuted or tortured is unlawful. Attached as **Exhibit 3** is a list of 21 district court decisions issued in the time since the First Circuit, on March 16th, stayed the summary judgment ruling in *D.V.D.* All address claims that the procedures provided by Respondents for challenging removal to third countries on fear-based grounds are constitutionally inadequate. Of these 21 decisions, only one, *Lopez v. U.S. Immigration and Customs Enforcement*, -- F.Supp.3d --, 2026 WL 1549307, *4 (W.D. Tex. Apr. 23, 2026), concludes Respondents' policy is completely lawful. Another finds that a reasonable fear interview is required, but review by an immigration judge is not. *See Gomez v. Bondi*, Case No. 1:25-CV-258, 2026 WL 1623429, *9 (S.D. Tex. Feb. 20, 2026).[9] The remaining 19 decisions on the list all find Respondents' policy fails to pass constitutional muster and order the provision of additional process. These decisions are illustrative only. There are many others not included on the list in which judges reach the same conclusion.

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asylum officer's negative credible fear finding, because "[w]hile aliens who have established connections in this country have due process rights in deportation proceedings,… an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause"). Petitioner has lived in the U.S. since his parents brought him here as a public interest parolee in 1965. Amended Petition at ¶ 9.

[9] Petitioner's research reflects that these are the only two instances of a district judge finding that a particular procedural protection is *not* warranted as relates to noncitizens contesting third country deportation.

IV. The Amended Petition must be granted as to Count IV, because Respondents do not dispute the allegations therein.

The Court has jurisdiction to consider Petitioner's claim that Respondents revoked his OSUP without adequate process and in violation of ICE's own regulations. *See T.C.T.*, 2025 WL 4648417 at *7; *Grigorian v. Bondi*, 824 F.Supp.3d 1243, 1249-50 (S.D. Fla. 2025). As to the merits, Respondents contend "Petitioner cites no authority holding that [8 C.F.R.] § 241.13(i) creates individual rights enforceable in habeas." Response at 7. That is not true. *See* Amended Petition at ¶ 67 ("The OSUP revocation regulations at 8 C.F.R. § 241.13(i) protect noncitizens' right to due process. *See Rodriguez Romero*, 2026 WL 321437 at *10.").[10] Because Respondents do not dispute Petitioner's allegations, the Court must grant the Amended Petition with respect to Count IV.

V. The Amended Petition must be granted as to Count V, because Respondents do not dispute the allegations therein.

Respondents contend Petitioner's "APA and Accardi claims are not cognizable in habeas," citing *Villafuerte v. Warden, Stewart Detention Center*, Case No. 4:18-CV-116-CDL-MSH, 2018 WL 6626640 (M.D. Ga. Nov. 27, 2018), *report and recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018). Response at 7. *Villafuerte*, though, is inapposite. The court there concluded the APA challenge to denial of a DACA application was not cognizable in habeas, because "[t]he cause of [the petitioner's] detention was his removal order and arrest by ICE under that order—not the USCIS's denial of his DACA application." *Villafuerte*, 2018 WL 6626640 at

[10] *Rodriguez Romero* has been published in the time since the Amended Petition was filed. The new Federal Supplement cite is *Rodriguez Romero v. Ladwig*, 827 F.Supp.3d 779 (M.D. La. 2026). As to due process, the relevant quote is: "[T]his Court now joins the multitude of courts within the Fifth Circuit and across the country recognizing that non-citizens have an overwhelming liberty interest in their continued release under [an] Order of Supervision ... that may not be removed without due process." *Rodriguez Romero*, 827 F.Supp.3d at 801 (internal citations omitted).

*3. Here, on the other hand, the unlawful revocation of Petitioner's OSUP is exactly what caused his detention. *Villafuerte* is therefore inapposite. Because Respondents do not dispute Petitioner's allegations, the Court must grant the Amended Petition with respect to Count V.

Respectfully submitted, this 24th day of July, 2026.

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