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

EDICSON DAVID QUINTERO CHACON,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-50-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S AMENDED MOTION TO DISMISS AND IN THE ALTERNATIVE MOTION TO STAY PROCEEDINGS

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

MARY L. LARAKERS
Senior Litigation Counsel

/s/ Lindsay W. Zimliki
Lindsay W. Zimliki
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
General Litigation and Appeals Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 353-5950
Facsimile (202) 305-7000
Lindsay.Zimliki@usdoj.gov

Attorneys for the United States

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Regulations

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

EDICSON DAVID QUINTERO CHACON,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-50-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S AMENDED MOTION TO DISMISS AND IN THE ALTERNATIVE MOTION TO STAY PROCEEDINGS

On February 10, 2025, Petitioner filed a petition for writ of habeas corpus ("Petition"), challenging the length of his detention and seeking release from custody as a remedy. ECF No. 1. On March 3 and March 17, 2025, Respondent filed motions for an extension of time within which to respond to the petition. ECF Nos. 5, 7. On March 20, 2025, Respondent filed a Motion to Dismiss the Petition. ECF No. 10.

On April 8, 2025, this Court issued an order appointing counsel for Petitioner, ordering the Parties to confer and propose a briefing schedule on the Government's motion to dismiss and on potential jurisdictional discovery, as well as allowing Petitioner's counsel to file an amended petition. ECF No. 12. On April 16, 2025, Petitioner's appointed counsel filed an amended petition for habeas corpus. ECF No. 22. The amended petition asserted jurisdiction under "28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (declaratory relief), and Article I, section 9, clause 2 of the U.S. Constitution (Suspension Clause), as Mr. Quintero is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the

Constitution, laws, or treaties of the United States." *Id.* ¶17. In the amended petition, Petitioner alleges that his detention in El Salvador is unlawful, a violation of due process under the Fifth Amendment, a violation of the Immigration and Nationality Act (INA), and a violation of habeas corpus. ECF No. 22 ¶¶ 113-136. He seeks release from detention in El Salvador, asks that the Court order Defendant to facilitate and effectuate his return and release into the United States or Venezuela, enjoin any further detention of Petitioner, declare his detention in El Salvador ultra vires and a violation of the INA, due process under the Fifth Amendment, and habeas corpus. *Id.* at 33-34 (Prayer for Relief).

On April 22, the Parties submitted a proposed joint scheduling order ("JSO"), ECF No. 25, which the Court adopted on April 23, 2025, ECF No. 26. Consistent with the JSO, Respondent hereby amends the previously-filed Motion to Dismiss, incorporating and expanding upon the arguments made therein, and in the alternative moves to dismiss or stay these proceedings pending the outcome of *D.V.D. et al. v. DHS*, Case No. 1:25-cv-10676-BEM (D. Mass.) to maximize judicial efficiency.[1] *See also Kilmar Armando Abrego Garcia, et al., v. Noem*, 8:25-cv-00951-PX (D. Md.).

BACKGROUND

On September 11, 2024, in removal proceedings under 8 U.S.C. §1229a, an immigration judge ("IJ") ordered Petitioner removed to Venezuela because he was an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, 8 U.S.C. § 1182(6)(A)(i). *See* ECF

[1] As noted in the original Motion to Dismiss, ECF No. 10, the proper respondent in a habeas action is ordinarily the warden of the facility where the detainee is being held, not the Attorney General or some other remote supervisory official. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The undersigned does not represent Terrence Dickerson, Warden, Stewart Detention Center, as Stewart is a private facility and Warden Dickerson is not a federal employee. However, because he was detaining the Petitioner at the request of the United States, all arguments and responses set forth by the United States apply to Warden Dickerson.

No. 10, Flores Declaration at ¶ 6, Exhibit ("Ex."). A; Order of the Immigration Judge (Sept. 11, 2024) Ex. B; Notice to Appear, Ex. A. Because Petitioner waived his right to appeal his removal order, his removal order became administratively final the same day, ECF No. 10, Ex. B. *See* 8 C.F.R. § 1241.1(b). On February 12, 2025, Petitioner was transferred from Stewart Detention Facility in Lumpkin, Georgia, to the El Paso Service Processing Center in El Paso, Texas. ECF No. 10, Ex. A at ¶ 6. On March 9, 2025, Petitioner was transferred to the El Valle Detention Facility in Raymondville, Texas for the purpose of staging his removal from the United States. *Id.*

Prior to March 15, 2025, the Government made efforts to effect the removal of Venezuelan nationals with final orders of removal to Venezuela. ECF 10, Ex. A at ¶ 7. However, on March 15, 2025, at the time of Petitioner's removal from the United States, Venezuela was not willing to accept its nationals for repatriation. *Id*. Thus, pursuant to the provisions of 8 U.S.C. § 1231(b)(2), the Department of Homeland Security ("DHS") identified El Salvador as an alternate removal country for Petitioner. *Id.* at ¶ 8. On March 15, 2025, Petitioner was removed from the United States to El Salvador by charter on a flight carrying immigration detainees, all of whom had final orders of removal. *Id.* He was removed pursuant to the authority vested in DHS under Title 8 of the U.S. Code. *Id.* Because Petitioner has been removed and is no longer in Respondent's custody, the Court should dismiss the habeas petition as moot.

STATUTORY AND REGULATORY FRAMEWORK

I. Removal Proceedings

Under the INA, 8 U.S.C. § 1101 *et seq.*, removal proceedings generally provide the exclusive means for determining whether an alien is both removable from the United States and eligible for any relief or protection from removal. *See* 8 U.S.C. § 1229a. The INA makes

several classes of aliens "inadmissible" and therefore "removable." *See* 8 U.S.C. §§ 1182, 1229a(e)(2)(A). These include aliens that lack a valid entry document "at the time of application for admission," § 1182(a)(7)(A)(i)(I), when they arrive at a "port of entry," or when they are found present in the United States, §§ 1225(a)(1), (3). If an alien is inadmissible, the alien is subject to removal from the United States. In removal proceedings pursuant to § 1229a, an alien may attempt to show that he or she should not be removed. Among other things, an eligible alien may apply for asylum on the ground that he or she would be persecuted on a statutorily protected ground if removed to a particular country. *Id.* §§ 1158, 1229a(b)(4); 8 C.F.R. § 1240.11(c). Among other ways, an order of removal is also considered final if an alien waives appeal. *See id.* § 1101(a)(47)(B). Once an order of removal is final, an alien can be removed from the United States. *See id.* § 1231(a)(1)(A)-(B).

II. Third Country Removals

Aliens subject to removal orders need not be removed to their native country. Generally, as relevant here, aliens ordered removed "may designate one country to which the alien wants to be removed," and DHS "shall remove the alien to [that] country[.]" 8 U.S.C. § 1231(b)(2)(A). In certain circumstances, however, DHS need not remove the alien to their designated country, including where "the government of the country is not willing to accept the alien into the country." *Id.* § 1231(b)(2)(C)(iii). In such a case, the alien "shall" be removed to the alien's country of nationality or citizenship, unless that country "is not willing to accept the alien[.]" *Id.* § 1231(b)(2)(D). If an alien cannot be removed to the 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 Enf't*, 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 the alien's 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. Further the United States must also comply with its obligations under the Convention Against Torture in not removing an alien to a country in which he/she will be tortured. "The Judiciary is not suited to second-guess such determinations" about "whether there is a serious prospect of torture at the hands of" a foreign sovereign. *Munaf v. Geren*, 553 U.S. 674, 702 (2008); *see Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) ("Under *Munaf*, . . . the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee.").

STANDARD OF REVIEW

I. Legal Standards Governing Motions Pursuant to Fed. R. Civ. P. 12(b)(1)

An action may proceed in this Court only if federal subject matter jurisdiction exists. *Lifestar Ambulance Serv., Inc. v. United States*, 365 F.3d 1293, 1295 (11th Cir. 2004). "Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area*

Sch. Dist., 475 U.S. 534, 541 (1986) (citation omitted). "The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). District courts are constitutionally obligated to dismiss any action if the plaintiff fails adequately to establish subject matter jurisdiction. *See Travaglio v. Am. Exp. Co.*, 735 F.3d 1266, 1268 (11th Cir. 2013).

"A defendant can move to dismiss a complaint under Rule 12(b)(1) for lack of subject matter jurisdiction by either a facial or a factual attack." *Stalley v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (citation omitted). "A facial attack on the complaint requires the court merely to look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for the purposes of the motion." *Id.* at 1232-33 (internal quotations and citation omitted). A factual attack challenges the existence of subject matter jurisdiction using material extrinsic from the pleadings, such as affidavits or testimony." *Id.* at 1233. The party seeking relief, and therefore invoking the court's jurisdiction, bears the burden of proving that subject matter jurisdiction exists. *Morrison v. Allstate Indem. Co*., 228 F.3d 1255, 1273 (11th Cir. 2000).

II. Legal Standards Governing Motions Pursuant to Fed. R. Civ. P. 12(b)(6)

On a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court accepts as true all of the factual allegations in a complaint and construes them in the light most favorable to the plaintiff. *See Jackson v. Bellsouth Telecomms*., 372 F.3d 1250, 1262 (11th Cir. 2004). The Supreme Court explains, however, that:

> While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted). To that end, courts "are not bound to accept as true a legal conclusion couched as a factual allegation." *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 680-81 (2009) (providing that "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," which simply "are not entitled to [an] assumption of truth."). Rather, the court considers whether a complaint asserts "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 570). A plausible claim for relief must include "factual content [that] allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id*. (citations omitted).

ARGUMENT

I. The Court Lacks Jurisdiction under the INA and REAL ID Act.

A. 8 U.S.C. § 1252(g) Bars Review of Challenges to the Execution of Removal Orders

The amended petition for review challenges Petitioner's removal to El Salvador rather than Venezuela. Since Petitioner challenges the execution of his removal order, this Court lacks jurisdiction under 8 U.S.C. § 1252(g).[2]

[2] The jurisdiction of the federal courts is presumptively limited. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) ("Congress, having the power to establish the courts, must define their respective jurisdictions."). They "possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *see also Sheldon*, 49 U.S. at 449 ("Courts created by statute can have no jurisdiction but such as the statute confers."). As relevant here, Congress divested district courts of jurisdiction to review challenges relating to removal proceedings and instead vested only the courts of appeals with jurisdiction over such claims.

Section 1252(g), as amended by the REAL ID Act, bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." *Id.* In enacting § 1252(g), Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 of claims arising from 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). *See also Singh v. Napolitano*, 500 F. App'x 50, 52 (2d Cir. 2012) (holding that attempt to "employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order," even "indirectly," is "jurisdictionally barred").

In *AADC*, the Supreme Court considered the reach of § 1252(g), explaining that with respect to the "three discrete actions" identified in the text of § 1252(g)—commencement of proceedings, adjudication of cases, and execution of removal orders—§ 1252(g) strips district courts of jurisdiction. *AADC*, 525 U.S. at 482. Those actions are committed to the discretion of the Executive Branch, and § 1252(g) was designed to protect that discretion and to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *AADC*, 525 U.S. at 487. Thus, by its plain terms, § 1252(g) bars Petitioner's claims. *AADC*, 525 U.S. at 487; *accord Silva v. United States*, 866 F.3d 938, 940-41 (8th Cir. 2017) (§ 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "*any* cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"). Indeed, courts have understood the § 1252(g) jurisdictional bar to apply even after an

alien's removal, in circumstances where an alien seeks to return to the United States to pursue further immigration relief. *See H.T. v. Warden, Stewart Det. Ctr.*, No. 4:20-CV-146-CDL-MSH (M.D. Ga. Dec. 29, 2020), *recommendation adopted*, 2021 WL 5444776 at *5 (M.D. Ga. Feb. 23, 2021) (finding the § 1252(g) barred challenges to Respondents' alleged refusal to facilitate Petitioner's return because the claim arises from execution of the removal order.); *Alomaisi v. Decker*, No. 20-cv-5059 (VSB) (SLC), 2021 WL 611047, at *8 (S.D.N.Y. Jan. 27, 2021) (finding jurisdiction lacking under, *inter alia*, § 1252(g), where Plaintiff filed a habeas petition seeking an order returning him to the United States from Yemen to pursue a motion to reopen that was pending at the time the petition was filed), *report and recommendation adopted Alomaisi v. Decker*, 2021 WL 3774117 (S.D.N.Y. Aug. 25, 2021); *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019) (dismissing for lack of jurisdiction, including under § 1252(g), habeas corpus petition seeking alien's return to the United States despite ICE's previous agreement that petitioner could stay in the United States for medical treatment).

In this case, Petitioner does not dispute that he was subject to a valid administratively final removal order, albeit one which directed his removal to Venezuela and not El Salvador. *See* Ex. A. At the time of his removal, however, Venezuela was not accepting ICE Air removal flights. *See* ECF No. 10, Ex. A at ¶ 7-8. As the government of El Salvador agreed to accept Petitioner, pursuant to 8 U.S.C. § 1231 and 8 C.F.R. § 241.15, on March 15, 2025, Petitioner was removed from the United States to El Salvador. *Id.* Under the INA, removal is authorized to a "[a] country with a government that will accept the alien into that country" if it would be "impracticable, inadvisable, or impossible" to remove the alien to designated country of removal or other enumerated countries. 8 U.S.C. § 1231(b)(2)(E)(vii); *see also* 8 C.F.R. § 241.1. Thus, because Petitioner's challenge is to the execution of a final removal order, i.e., executing his

removal to El Salvador instead of Venezuela, this action is barred by the plain terms of § 1252(g). Accordingly, this Court lacks jurisdiction.

B. 8 U.S.C. §§ 1252(a)(5) and (b)(9) Channel All Challenges to Removal Orders and Removal Proceedings to the Courts of Appeals

Even if § 1252(g) of the INA did not bar review, §§ 1252(a)(5) and 1252(b)(9) of the INA bar review in *this* Court. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). This explicitly excludes "section 2241 of title 28, or any other habeas corpus provision." 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals. Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. § 1252(b)(9). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all* [claims arising from deportation proceedings]" to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. "Taken together, §[§] 1252(a)(5) and [(b)(9)] mean that *any* issue— whether legal or factual— arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and- practices challenges . . . whenever they 'arise from' removal proceedings").

Here, Petitioner seeks relief that amounts to an impermissible challenge to his final removal order, over which this Court lacks jurisdiction. He seeks an order to "undo" his removal or to redirect his removal from El Salvador to Venezuela. ECF No. 22 at 33-34. Accordingly, this

Court lacks jurisdiction under §§ 1252(a)(5) and (b)(9).[3] *See J.E.F.M.*, 837 F.3d at 1031; *see also, Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011); *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020); *Camarena v. Director, Imm. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021); *Linares v. Dep't of Homeland Sec.*, 529 F. App'x 983 (11th Cir. 2013); *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830 (11th Cir. 2016).

C. There is no Habeas Jurisdiction Because Petitioner is not in U.S. Custody.

Habeas corpus "is the appropriate remedy to ascertain . . . whether any person is rightfully in confinement." *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (internal citation omitted). Habeas, thus requires, as an essential element of jurisdiction, that the detainee be in the custody of the United States. *See*, *e.g.*, *Carafas v. LaVallee*, 391 U.S. 234, 238 & n.9 (1968); *Hanif v. Stewart*, 2018 WL 1702412, *6 (S.D. Ala., Mar. 1, 2018) (citing *Smith v. Ashcroft*, 295 F.3d 425, 428 (4th Cir. 2002). Further, the case-or-controversy requirement of Article III, section 2 of the U.S. Constitution subsists through all stages of federal judicial proceedings. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998). A petitioner "must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). "The doctrine of mootness derives directly from the case or controversy limitation because an action that is moot cannot be characterized as an active case or controversy." *Soliman v. United States*, 296 F.3d 1237, 1242 (11th Cir. 2002) (internal quotation marks and citation omitted). "Put another way, a case is moot

[3] The Supreme Court's recent order in *Noem v. Abrego Garcia*, 604 U.S. ---, 2025 WL 1077101 (Apr. 10, 2025), which did not address the INA's jurisdiction stripping provisions, is distinguishable. Indeed, there, the plaintiff, while under a final order of removal, had been granted withholding of removal to El Salvador. *Id.* at *1. He was nonetheless removed to El Salvador. *Id.* Here, on the other hand, Petitioner was not granted withholding of removal. ECF No. 10, Ex. B. Instead, he was under a final order of removal to Venezuela. *Id.* Because, however, Venezuela was not accepting ICE Air removal flights, he was removed to a third country, El Salvador, pursuant to 8 U.S.C. § 1231(b)(2). *See* Ex. A at ¶¶7-8.

when it no longer presents a live controversy with respect to which the court can grant meaningful relief." *Fla. Ass'n of Rehab. Facilities, Inc. v. Fla. Dep't of Health & Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (internal quotation mark and citation omitted). Thus, "[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001). "Indeed, dismissal is required because mootness is jurisdictional." *Id.*; *see also De La Teja v. United States*, 321 F.3d 1357, 1362 (11th Cir. 2003). Once a petitioner has been removed from the United States, the dispute regarding his detention is rendered moot and must be dismissed. *See Soliman*, 296 F.3d at 1243 (finding no case or controversy once Petitioner in habeas proceeding was removed to Egypt, where his petition sought release from detention and cessation of force feeding).

Here, Petitioner was removed from the United States, is no longer in Respondent's custody, Ex. A at ¶ 8, and the Court can no longer grant him any meaningful relief regarding his detention. *See H.T.*, 2020 WL 12656230, at *2-6 (M.D. Ga. Dec. 29, 2020), *recommendation adopted*, 2021 WL 5444776 (M.D. Ga. Feb. 23, 2021) (dismissing habeas petition raising claims arising from alien's detention as moot due to alien's removal). Indeed, courts have routinely concluded that aliens who have already been removed prior to filing habeas petitions do not satisfy the "in custody" requirement.[4] Because Petitioner is no longer in Respondent's custody, the Court should dismiss the Petition as moot.

[4] *See Rivas-Melendez v. Napolitano*, 689 F.3d 732, 738-39 (7th Cir. 2012) (petitioner was not "in custody" where he had been physically removed prior to filing his petition); *Merlan v. Holder*, 667 F.3d 538 (5th Cir. 2011) (same); *Kumarasamy v. Attorney General*, 453 F.3d 169, 172-73 (3d Cir. 2006) (same); *Patel v. U.S. Attorney General*, 334 F.3d 1259, 1263 (11th Cir. 2003) (declining to transfer action to district court where alien had already been removed and thus failed to satisfy the "in custody" requirement for habeas); *Miranda v. Reno*, 238 F.3d 1156, 1158-59 (9th Cir. 2001) (petitioner not "in custody" for habeas purposes where he had been removed prior to filing his petition).

Moreover, Petitioner argues that he was removed to El Salvador without notice that was a possibility and asserts to be held by the El Salvadoran government at the Centro de Confinamiento del Terrorismo, the Terrorism Confinement Center ("CECOT"), in Tecoluca, El Salvador. ECF No. 22 at ¶ 1, 3, 47, 131. The necessary corollary of these predicates is that Petitioner is not in the United States. He does not assert how this Court may assert jurisdiction such that it can compel Respondent to request that the government of El Salvador return him from CECOT to the custody of the United States. In short, Petitioner fails to demonstrate how the United States can exercise its will over a foreign sovereign. Even to the extent the United States might entreat, cajole, or otherwise request that El Salvador take a certain course of action, that is not "custody" under which habeas corpus would apply. *DHS v. Thuraissigiam*, 591 U.S. at 117.

Even if this Court's were to conclude Petitioner was somehow in United States "custody" despite being in El Salvador, the writ itself acts not on the detainee but the custodian. 28 U.S.C. § 2242-43. Thus, a custodian with the power to produce Petitioner must be physically within the jurisdiction of this Court for it to exercise jurisdiction in habeas. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). No allegation is made that Petitioner's *former* warden holds the *present* power to produce Petitioner to this Court. ECF No. 22 at ¶ 21 (noting that Respondent Terrence Dickerson had control over Petitioner during his time in detention at the Steward Detention Center).

II. The Court Cannot Order the Transfer of Petitioner from a Foreign Sovereign.

Aside from the jurisdictional impediments discussed above, this Court lacks the power grant Petitioner the relief he seeks—namely, an order directing the government of El Salvador to remove him and return him to the United States or for the government of Venezuela to admit

him. It is beyond the scope of this Court's power to direct the Government to return Petitioner to the United States. His removal was in accordance with the prerogatives of the legislative and executive branches, thus to order him returned would undercut those prerogatives. Indeed, the Constitution vests the power to admit or exclude aliens "in the national government, to which the Constitution has committed the entire control of international relations, in peace as well as in war." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). That power belongs to the political Branches. *Id.*; *see also Kleindienst v. Mandel*, 408 U.S. 753, 765-66 & n.6 (1972) (noting that "the Court's general reaffirmations" of the political Branches' exclusive authority to admit or exclude aliens "have been legion"); *see also Thuraissigiam,* 591 U.S. at 139 ("[T]he Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted." (internal citations and quotation marks omitted)). Control of the Nation's borders is vested in the political branches because that control is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government"—all matters "exclusively entrusted to the political branches of government." *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Consistent with those principles, the Supreme Court "without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'" *Kleindienst*, 408 U.S. at 766 (quotation omitted). So too the Court has upheld the Executive's "inherent" power to administer the immigration laws. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). In that regard, the Court has held that admission to the United States "is a privilege granted by the

sovereign United States Government," *id.*, and has repeatedly made clear that "it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien." *Id.* at 543.

Nor could this Court grant Petitioner's request to order him removed from El Salvador to Venezuela. ECF No 22, at 33-34. This Court cannot broker a deal between two foreign sovereigns, which is a clear-cut foreign relations matter outside the purview of the federal judiciary. *See generally Harisiades*, 342 U.S. at 588–89 ("any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations . . . . Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference."). Indeed, Petitioner lacks standing for such sweeping relief, as the remedy is "too speculative" since it relies on the "the unfettered choices made by independent actors not before the court[ ]"—here the separate sovereigns of El Salvador and Venezuela. *Bernhardt v. Cnty. of Los Angeles*, 279 F.3d 862, 869–70 (9th Cir. 2002) (no standing because remedy relied on actions of third parties) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Even if the remedy were just to request the transfer between nations (which by itself would not remedy any injury), this would still intrude on the President's Article II powers, which "authorize[] the Executive to engag[e] in direct diplomacy with foreign heads of state and their ministers," *Zivotofsky v. Kerry*, 576 U.S. 1, 14 (2015). The Supreme Court has "taken care to avoid 'the danger of unwarranted judicial interference in the conduct of foreign policy,'" *Biden v. Texas*, 597 U.S. 785, 805 (2022). To even ask the Government to broker such a deal would significantly interfere with the President's core foreign affairs responsibilities.

Given the above separation-of-powers principles, the courts have traditionally and consistently declined to redraw the lines that Congress has drawn to decide which aliens should be allowed into the United States. *See, e.g.*, *Plyler v. Doe*, 457 U.S. 202, 225 (1982) ("Congress has developed a complex scheme governing admission to our Nation and status within our borders. The obvious need for delicate policy judgments has counseled the Judicial Branch to avoid intrusion into this field."); *cf. Trump v. Hawaii*, 138 S. Ct. 2392, 2418 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." (internal quotation marks and citation omitted)). A district court cannot direct Executive Branch officials to effectuate an alien's entry outside the scope contemplated by 8 U.S.C. § 1182. As noted above, the determination whether to parole an alien into the United States rests in the sole discretion of DHS and may be exercised only "for urgent humanitarian reasons or significant public benefit," 8 U.S.C. § 1182(d)(5)(A), and district courts may not direct any particular exercise of that discretion. Given this is the case with regard to admission, *a fortiori* a court cannot require the United States to negotiate a transfer of an alien's custody between two foreign countries.

Petitioner was removed pursuant to his valid, final removal order. ECF No. 10, Ex. B; Ex. A at ¶¶ 7-8. There is simply no basis, or jurisdiction, for this Court to grant the novel and extraordinary relief that Petitioner seeks, namely, an order directing the Government of El Salvador to remove him, the government of Venezuela to admit him, or the United States Government to request either. Accordingly, independent of the other jurisdictional impediments, the Court should dismiss this action.

III. This Court should dismiss or, alternatively, stay proceedings pending the resolution of an already-certified nationwide class action.

Alternatively, notwithstanding the jurisdictional bars outlined above, this Court should dismiss, or, at the very least, stay this action pending resolution of class action currently pending in the United States District Court for the District of Massachusetts, *see D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.), in which Petitioner is a class member. "Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action." *Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). As the Eighth Circuit stated,

> 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). Thus, dismissal of this action in light of Petitioner's membership in the *DVD* class is warranted.

Alternatively, this Court should stay proceedings pending the outcome of *DVD*. District courts also have the inherent discretionary authority "to stay litigation pending the outcome of related proceedings in another forum." *Chappell v. United States*, 2016 WL 11410411, at *2 (M.D. Ga. Dec. 16, 2016) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982) (citing *Landis v. North American Co.*, 299 U.S. 248, 255 (1936), *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 665 (1978), and *P.P.G. Indistries Inc. v. Continental Oil Co.*, 478 F.2d 674 (5th Cir. 1973)). "A stay is also necessary to avoid the inefficiency of duplication, the embarrassment of conflicting rulings, and the confusion of piecemeal resolutions where comprehensive results are required." *Chappell*, 2016 WL

11410411, at *3 (internal quotations and citations omitted). Here, it is apparent that the potential for conflicting decisions on the issues central to this case increases daily,[5] but trailing a nationwide class action serves great equity and inoculates against different courts reaching different conclusions, or even inconsistent approaches. *See Nio v. United States Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. Oct. 27, 2017); Fed. R. Civ. P. 23(b)(1)(A) (permitting a class action to proceed when "prosecuting separate actions by or against individual class members would create a risk of: (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class ..."); *Id.* at (b)(2) (permitting a class action when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.").

Taking the instant Petition at face value, it appears that Petitioner is a member of the nationwide class certified by the United States District Court for the District of Massachusetts on April 18, 2025. *D.V.D. et al. v. DHS*, Case No. 1:25-cv-10676-BEM (D. Mass.) ECF No. 64. That class is defined as

> [a]ll individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) whom DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 23, 48. In *D.V.D.,* Plaintiffs, on behalf of themselves and this certified class, seek to require DHS to provide additional procedures to class members before removing them to a third country

[5] While not a nationwide class action, the pending proceedings in *Kilmar Armando Abrego Garcia*, 8:25-cv-00951-PX (D. Md.) will almost certainly impact on some of the same issues raised by this case and are far more advanced in proceedings such that the resolution of that case, perhaps informed by pronouncements from the Supreme Court, will likewise assist in a consistent resolution of this matter.

(*i.e.* a country not previously designated in removal proceedings). *See D.V.D., Case No. 1:25-cv-10676-BEM (D. Mass.)*, Complaint, Ex. B. They also seek the return of one named Plaintiff and any class members already removed. *Id.* at 37 (Prayer for Relief ¶¶ k, l). On March 28, 2025, the court granted Plaintiffs' motion for a temporary restraining order and on April 18, 2025, the Court issued a preliminary injunction and certified a class.[6] *D.V.D., Case No. 1:25-cv-10676-BEM, ECF* Nos. 34 & 64. While the Court has not yet addressed the claims of class members who have already been removed, it will and must to resolve the claims before it. Membership in the class is not waivable. Fed. R. Civ. P. 23(b)(2). ECF No. 64 at 33 ("the Court finds that the named and unnamed Plaintiffs alike share an identical interest in challenging Defendants' alleged practice of removing individuals to third countries without notice and an opportunity to be heard, and, as such, satisfy the typicality requirement under Rule 23(a)(2)."); *see also Kincade v. Gen. Tire and Rubber Co.*, 635 F.2d 501, 506-07 (11th Cir. 1981) (discussing the lack of an opt out under Rule 23(b)(2)).

Because the District Court for the District of Massachusetts has certified a class that will address Petitioner's claims, staying these proceedings would be prudent as a matter of comity. *Cf Munaf*, 553 U.S. at 693 ("prudential concerns, such as comity . . . may require a federal court to forgo the exercise of its habeas corpus power"). As another district court has recognized, Rule 23(b)(1) permits a class action to proceed where "prosecuting separate actions by or against individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." *Nio v. United States Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (quoting Fed. R. Civ. P. 23(b)(1)). Indeed, this is the very purpose of a Rule

[6] The Government has appealed the district court's preliminary injunction. *D.V.D., et al. v. U.S. Dep't of Homeland Sec., No. 25-1311 (1st Cir.)*, but the district court has not stayed the action in the interim.

23(b)(2) class. Because "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Nio*, 323 F.R.D. at 34. Here, under the JSO, preliminary steps in this case are not due to be completed until May 16, 2025. There is little sense to expedite briefing in this matter when the class action – that includes this Petitioner – is already well under way and currently being evaluated to some degree by the First Circuit Court of Appeals. *D.V.D., et al. v. U.S. Dep't of Homeland Sec., No. 25-1311 (1st Cir.).* This Court should avoid potential disparate treatment and frustrating resolution of the classwide claims in *D.V.D.* By dismissing this case or, at least, staying it.

"Consistency of treatment [is at the heart of what] Rule 23(b)(2) was intended to assure." *Cicero v. Olgiati*, 410 F. Supp 1080, 1099 (S.D. NY 1976). Dismissing, or at a minimum, staying these proceedings to allow resolution of a nationwide class action (to which Petitioner belongs) allows for consistent treatment and promotes efficiency. To the extent this Court is inclined to stay this action, the Parties could submit periodic status reports or telephonic conferences until the *DVD* nationwide class action is resolved, the resolution of which would necessarily resolve Petitioner's claims.

CONCLUSION

For the foregoing reasons, Respondent requests that that the Petition be dismissed, or in the alternative that these proceedings be stayed pending the outcome of *D.V.D. et al. v. DHS*, Case No. 1:25-cv-10676-BEM (D. Mass.).

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General
Civil Division

MARY L. LARAKERS
Senior Litigation Counsel

DATED: May 2, 2025

/s/ Lindsay W. Zimliki
Lindsay W. Zimliki
Trial Attorney
United States Department of Justice
Civil Division
Office of Immigration Litigation
General Litigation and Appeals Section
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
(202) 353-5950
Facsimile (202) 305-7000
Lindsay.Zimliki@usdoj.gov

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2025, I electronically filed the foregoing via the Court's CM/ECF system.

/s/ Lindsay W. Zimliki
LINDSAY W. ZIMLIKI
Trial Attorney
PA Bar No. 322181
U.S. Department of Justice
Civil Division
Office of Immigration Litigation
General Litigation and Appeals Section
P.O. Box 868
Ben Franklin Station
Washington, D.C. 20044
T: (202) 353-5950
F: (202) 305-7000
E: Lindsay.Zimliki@usdoj.gov