

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

**BRITANIA URIOSTEGUI
RIOS**

CIVIL ACTION NO. 25-CV-01320

VERSUS

DISTRICT JUDGE EDWARDS

DONALD J. TRUMP, ET AL

MAGISTRATE JUDGE PEREZ MONTES

**RESPONSE IN OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

On behalf of Respondents, Donald J. Trump, Kristi Noem, Todd Lyons,
Brian S. Acuna and Eleazar Garcia

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INTRODUCTION

The Petitioner is an alien with a final order of removal being detained under 8 U.S.C. § 1231(a)(6) while removal is pending. Petitioner seeks release from ICE detention and alleges that (1) removal is not reasonably foreseeable so release is the only appropriate remedy, (2) there could be potential deportation to a third country absent notice and opportunity to be heard, and (3) ICE is denying reasonable accommodations for post-traumatic stress disorder (PTSD) and major depressive disorder (MDD) in violation of the Rehabilitation Act (REHAB Act), which should require release. None of these arguments have merit, and the Petition should be dismissed.

STATEMENT OF FACTS

Petitioner, Britania Uriostegui Rios, is a non-citizen from Mexico with a final order of removal entered on March 14, 2025. *See* Exhibit A, Declaration of AFOD. Since arriving in the United States, Rios has amassed a significant criminal history including, most recently, conviction of assault with a deadly weapon on October 31, 2023. Ex. A, ¶¶ 4-13; *see also* ECF 1, ¶3. Although Rios previously had lawful permanent resident status granted in 2012 (not 2011), that status was removed after Rios was convicted of the aggravated felony of assault with a deadly weapon in 2023. Ex. A, ¶¶ 16-17; *see also* ECF 1, ¶¶ 3 and 5. Rios was taken into custody by ICE on April 16, 2024, and was deemed removable by an Immigration Judge on August 20, 2024. Ex. A, ¶ 17; *see also* ECF 1, ¶¶ 4-5. On March 14, 2025, Rios was granted deferral of removal to Mexico under the Convention Against Torture (CAT). Ex. A, ¶ 18; *see also* ECF 1, ¶6. Both parties waived appeal, and the order of removal became administratively final. Ex. A, ¶ 18.

On May 11, 2025, ICE requested to remove Rios to Costa Rica, Nicaragua and Honduras. *Id.* at ¶ 19. On May 12, Honduras declined to accept Rios. *Id.* at ¶ 20. On May 13, Costa Rica declined to accept Rios. *Id.* at ¶ 21. Nicaragua has not provided a response to the request. *Id.* at ¶ 22. On June 4, 2025, Rios was provided with a "Decision to Continue Detention", stating that ICE has determined

to maintain custody because Rios has not demonstrated that, if released, Rios will not: (1) pose a significant risk of flight pending removal from the United States, and (2) pose a danger to the community, to the safety of other persons, or to property, and because ICE is unable to conclude that the factors in 8 C.F.R. § 241.4(e) have been met. *Id.* at ¶ 24; Exhibit B, Decision to Continue Detention. On August 5, 2025, Rios was served with a Notice of Removal to El Salvador. *Id.*; Exhibit C, Notice of Removal. The request to remove Petitioner to El Salvador remains pending. *Id.* at ¶ 25. However, third country removals are continually increasing. *Id.* at ¶ 26.

LAW AND ARGUMENT

I. Petitioner's Post-Final Order of Removal Detention is Lawful and Constitutional

Because Rios is subject to a final order of removal, the statutory basis for continued detention is 8 U.S.C. § 1231. Rios's detention is lawful because (1) ICE has the discretion to continue the detention under Section 1231 due to Rio's criminal history and the impending removal; and (2) Rios fails to show that the continued detention is unreasonable under the *Zadvydas* framework.

A. Due to Petitioner's criminal history and upcoming removal, continued detention is lawful.

Because Rios is currently subject to a final order of removal, the statutory basis for detention is 8 U.S.C. § 1231. That statute requires the Government to "remove the alien from the United States within a period of 90 days (in this section referred to as the 'removal period')." 8 U.S.C. § 1231(a)(1)(A). As relevant here, that removal period runs from "[t]he date the order of removal becomes administratively final," *id.* § 1231(a)(1)(B), which was March 14, 2025, for Rios. *See* Ex. A ¶ 18; *see also* 8 C.F.R. § 1241.1(b).

"During the removal period, the Attorney General shall detain the alien," and "[u]nder no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title." 8 U.S.C. § 1231(a)(2)(A); *see also* 8 C.F.R. § 241.3(a). This

mandatory detention provision is applicable to Rios because Rios is deportable under section 1227(a)(2)(iii) as an alien convicted of an aggravated felony (in this case, assault with a deadly weapon).

However, even after the 90-day removal period, an alien's release from detention is not guaranteed. "An alien ordered removed who is inadmissible under section 1182 of this title, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal, *may be detained* beyond the removal period and, *if released*, shall be subject to the terms of supervision in". 8 U.S.C. § 1231(a)(3). 8 U.S.C. § 1231(a)(6) (emphasis added). The decision regarding release is discretionary. The Supreme Court has held that 8 U.S.C. § 1231(a)(6) does not require bond hearings for aliens after six months of detention or require the Government to bear the burden of proving by clear and convincing evidence that an alien poses a flight risk or a danger to the community. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022).

Importantly, the alien has the burden to "demonstrate[] to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States." 8 C.F.R. § 241.4(d)(1). "Before making any recommendation or decision to release a detainee," the pertinent reviewing officials "must conclude that: (1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest; (2) The detainee is presently a non-violent person; (3) The detainee is likely to remain nonviolent if released; (4) The detainee is not likely to pose a threat to the community following release; (5) The detainee is not likely to violate the conditions of release; and (6) The detainee does not pose a significant flight risk if released." *Id.* § 241.4(e). Further, 8 C.F.R. § 241.4(f) sets forth eight factors, which "should be weighed in considering whether to recommend further detention or release of a detainee . . .".

Here, considering Rios’s violent criminal history, ICE has properly extended detention under § 1231 and the applicable regulations due to the determination that Rios is likely to be removed in the reasonably foreseeable future and because Rios has not demonstrated that, if released, Rios will not pose a flight risk or danger to the community. *See* Exs. A, ¶25 and B.

B. Petitioner has failed to meet the burden of proving there is a good reason to believe removal is not likely in the reasonably foreseeable future.

The length of Rios’s detention is not unconstitutional, particularly in light of the upcoming removal and applicable criminal history. A petitioner may challenge continued detention under the framework established by the U.S. Supreme Court in *Zadvydas v. Davis*, which held that detention may not be indefinite and is presumptively reasonable for only six months beyond the removal period. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In a challenge to detention under *Zadvydas*, the petitioner must “provide [] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* The Government must then respond with evidence sufficient to rebut that showing. *Id.* The Supreme Court further emphasized that the six-month presumption does not mean that every alien not removed must be released after six months. *Id.* “To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.” *Id.*; *see also Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (quoting *Zadvydas*, 533 U.S. at 701); *see also, Agyei-Kodie v. Holder*, 418 F. App’x 317, 318 (5th Cir. 2011).

“The burden is on the alien to show that there is no reasonable likelihood of repatriation.” *Agyei-Kodie*, 418 F. App’x at 318; *Andrade*, 459 F.3d at 543-44 (“The alien bears the initial burden of proof in showing that no such likelihood of removal exists.”). An alien’s claim must be supported by more than mere “speculation and conjecture.” *Idowu v. Ridge*, 03-1293, 2003 WL 21805198, at *4 (N.D. Tex. Aug. 4, 2003) (citing *Fabim v. Ashcroft*, 227 F. Supp. 2d 1359, 1366 (N.D. Ga. 2002)). Additionally, mere conclusory allegations are insufficient to meet the alien’s burden of proof. *Nagib v. Gonzales*, No.

3:06-cv-0294-G, 2006 WL 1499682, at *3 (N.D. Tex. May 31, 2006) (citing *Gonzalez v. Bureau of Immigration and Customs Enforcement*, No. 1:03-cv-178-C, 2004 WL 839654 (N.D. Tex. Apr. 20, 2004)).

The Northern District of Texas has clarified:

To carry his burden, [the] petitioner must present something beyond speculation and conjecture. To shift the burden to the government, [the] petitioner must demonstrate that “the circumstances of his status” or the existence of “particular and individual barriers to his repatriation” to his country of origin are such that there is no significant likelihood of removal in the reasonably foreseeable future.

Idowu, 2003 WL 21805198, at *4; *see also Akinmale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) ; *Ali v. Gomez*, No. SA-11-CA-726-FB, 2012 WL 13136445, at *6 (W.D. Tex. March 14, 2012) (denying habeas relief when petitioner offered only ‘conclusory statements’ to show he will not immediately be removed to Pakistan). If the alien fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Akinmale*, 287 F.3d at 1051.

The “reasonably foreseeable future” is not a static concept. Instead, it is fluid and country specific, significantly depending on the diplomatic relations between the United States and the country that will receive the removed alien. The processes for obtaining a temporary travel document from another country are complex, multi-faceted, and include considerations of diplomacy that are beyond the control of ICE. The Northern District of Georgia has explained:

Clearly, it is no secret that the bureaucracies of second and third world countries, and not a few first world countries, can be inexplicably slow and counter-intuitive in the methods they employ as they lumber along in their decision-making. To conclude that a deportable alien who hails from such a country must be released from detention, with the likely consequence of flight from American authorities back to the hinterlands, simply because his native country is moving slow, would mean that the United States has effectively ceded its immigration policy to those other countries. The Court does not read the holding of *Zadvydas* as requiring such an extreme result.

Fahim v. Ashcroft, 227 F. Supp. 2d 1359, 1367 (N.D. Ga. 2002).

Moreover, even a “lack of visible progress ... does not in and of itself meet [the petitioner’s] burden of showing that there is no significant likelihood of removal.” *Id.* at 1366. “It simply shows

that the bureaucratic gears of the [federal immigration agency] are slowly grinding away.” *Khan v. Fasano*, 194 F.Supp.2d 1134, 1137 (S.D. Cal. 2001); *Idonu* 2003 WL 21805198, at *4.

Rios’s habeas petition also fails due to its lack of specific allegations. When a petitioner fails to come forward with an initial offer of proof, the petition is ripe for dismissal. *Andrade v. Gonzalez*, 459 F.3d 538 (5th Cir. 2006) (acknowledging the petitioner’s initial burden of proof where claim under *Zadvydas* was without merit because it offered nothing beyond the petitioner’s conclusory statements suggesting that removal was not foreseeable). In this case, Rios has offered nothing beyond the fact of the six- month post removal order detention and unsupported (and inaccurate) allegations that removal efforts to “El Salvador, Guatemala, Honduras, Nicaragua, Costa Rica, and Panama” have failed. Pet. (ECF 1), ¶ 2. This allegation alone does not lead to a reasonable inference that Rios has no significant likelihood of removal in the foreseeable future. Rios does not otherwise provide any other “good reason” to challenge continued detention. Moreover, Rios’s allegations that the removal efforts have failed is not accurate, where removal has only been requested and rejected by Honduras, Costa Rica and Nicaragua. Ex. A, ¶¶ 19-22. No removal was requested or denied to Panama and Guatemala. Moreover, while removal to El Salvador was recently requested, El Salvador has not denied that request, which remains pending. *Id.* at ¶ 25. Accordingly, the Government continues to act diligently to execute Rios’s removal order and is simply waiting for a response from El Salvador.

This Petition should be dismissed, like the petitions in *Fabim v. Ashcroft*, 227 F. Supp. 2d 1359, 1365 (N.D. Ga. 2002) and *Nagib v. Gonzales*, 2006 WL 1499682 at p. 2. In both cases, courts found that the aliens had not met their burdens because the only evidence of a good reason to believe there was no significant likelihood of a reasonably foreseeable removal was the time in detention and the assertion that a receiving country had not yet issued travel documents. In these types of cases, absent evidence of an institutional barrier to removal or an individual barrier to removal, habeas relief is not

warranted. *Fabim*, at 1365-1366; *Nagib*, at pp. 2-3. Mere delay does not trigger an inference that the removable alien will not be accepted by a country. *See, Fabim*, at 1366.

The Government is presently attempting to remove Rios to El Salvador. Ex. A ¶ 25. While Rios has raised a general claim of fear of removal to a third country that does not respect the rights of transgender people, Pet. ¶ 81, Rios has not raised a specific fear-based claim related specifically to removal to El Salvador, despite receiving notice of such removal almost three months ago. Regardless, even if Rios raises a reasonable fear allegation concerning El Salvador, that claim does not entitle Rios to remain in the United States indefinitely. Third country removals to El Salvador occur regularly. The Government accordingly intends to remove Rios to El Salvador imminently. *Id.* ¶¶ 25-26.

Further, as of the filing of this response, Rios has been detained just short of seven (7) months since receiving a final order of removal. With a rhetorical sleight of hand, Rios references being “in custody of [DHS] continuously since detention since April 16, 2024,” after Rios was transferred to ICE custody from criminal custody. ECF No. 1 ¶ 4. However, Rios is blurring the critical distinction between detention during removal proceedings under 8 U.S.C. §§ 1225, 1226 and detention under 8 U.S.C. § 1231 after a final order of removal is entered. Rios’s current detention is under the latter statute, for which the relevant period is approximately seven (7) months. This period of detention is well within the length of time that other courts in the Fifth Circuit have found to be reasonable.¹

As explained in the accompanying declaration, Rios is expected to be removed to El Salvador in the near future. Therefore, Rios cannot meet the burden of showing there is no significant likelihood of removal in the reasonably foreseeable future. Ultimately, Rios’s detention pending removal

¹ *See, e.g., Delgado-Rosero v. Warden, LaSalle Det. Ctr.*, No. 1:16-CV-01250, 2017 WL 2580509, at *3-4 (W.D. La. May 1, 2017), *report and recommendation adopted*, 2017 WL 2579250 (June 13, 2017) (17 months); *Barrera-Romero v. Cole*, No. 1:16-cv-00148, 2016 WL 7041710, at * 5 (W.D. La. Aug. 19, 2016) (20 months); *Garcia v. Lacy*, No. H-12-3333, 2013 WL 3805730, at *5 (S.D. Tex. July 19, 2013) (27 months); *Kim v. Obama*, No. EP-12-CV-173-PRM, 2012 WL 10862140, at *3 (W.D. Tex. July 10, 2012) (18 months); *M.P. v. Joyce*, No. 1:22-CV-06123, 2023 WL 5521155, at *4 (W.D. La. Aug. 10, 2023) (18 months at the time of Court’s opinion and collecting cases).

comports with the letter of the law and is outside the scope of *Zadhydas* and the Petition should be dismissed.

II. Theoretical Fear-Based Claims for Deportation to a Third Country Should not be addressed.

Here, as discussed above, Rios has received a final order of removal and is detained under 8 U.S.C. § 1231. That order became effective March 14, 2025, when Rios was granted deferral from removal to Mexico under CAT. Ex. A, ¶ 18. A grant of deferral does not guarantee the alien will be released from custody. See 8 C.F.R. § 208.17(b)(1)(ii), (c). Even if an alien prevails on a CAT claim, the removal order remains valid and enforceable, albeit not executable to the specific country for which the alien has demonstrated a likelihood of persecution or torture. 8 U.S.C. § 1231(b)(2)(E); 8 C.F.R. § 1208.16(f); *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) (“If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien to that particular country, not *from* the United States.” (emphasis in original)). Rios’s deferral applies only to Mexico; it does not entitle Rios to remain in the United States. And though Rios has been detained beyond the 90-day removal period in 8 U.S.C. § 1231(a)(1)(A), continued detention is authorized by 8 U.S.C. § 1231(a)(6) because Rios is deportable under Section 1227(a)(2) and also because Rios has been determined by the Attorney General to be a risk to the community. Ex. A ¶¶ 24.

Since Rios cannot be removed to Mexico, ICE must remove Rios to a third country. 8 U.S.C. § 1231(b)(E)(vii). Rios makes a theoretical due process argument that removal to a third country could occur without notice and the opportunity to make fear-based claims regarding the removal. However, Rios is on notice that removal to El Salvador is being sought. Ex. A, ¶¶ 25-26. Even so, the Petition makes no specific fear-based claim related to El Salvador other than to surmise, generally, that if removed to a country that does not respect the rights of a transgender person, Rios could be persecuted or tortured. ECF 1, ¶ 81. Rios argues that a future deportation to a third country pursuant to the Noem March 30, 2025 memo violates Constitutional due process rights, relying on the District

Court ruling in *D.V.D. et al. v. DHS*, 778 F. Supp. 3d 355 (D. Mass. 2025), which enjoined removals pursuant to the memo. The Supreme Court, however, has stayed the injunction. *DHS v. D.V.D.*, 606 U.S. ___, 145 S.Ct. 2153 (2025), as Rios noted in the Petition. ECF ¶ 70. And, regardless of Rios's claims to the contrary, the Supreme Court's stay order does apply to Rios because Rios is a member of the *D.V.D.* class, as also noted in the Petition. *Id.* ¶ 83 ("There is no longer a separate court order in place right now to help protect the rights of D.V.D. class members like Britania.").

Accordingly, the Court should decline to address the issue since Rios is a member of the *D.V.D.* class. Furthermore, the argument should be rejected because the Court lacks jurisdiction to hear this claim.

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

At the outset, and notwithstanding the jurisdictional bars outlined below, 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.), of which Rios 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). This Court recently denied a temporary restraining order on this very basis, noting that the litigation should likely be dismissed without prejudice because "as an individual subject to a final order of removal who ICE plans to deport to a third

country...Petitioner is a member of the D.V.D. class”. *Echavez v. Lyons, et al*, No. 3:25-cv-01282 at *3 (W.D.La. Sept. 22, 2025). Thus, dismissal of this action in light of Rios’s membership in the *D.V.D* class is warranted.

Alternatively, this Court should stay proceedings pending the outcome of *D.V.D.* 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. 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. Industries 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, the potential for conflicting decisions is real. Taking the instant Petition at face value, it appears that Rios 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.*, 778 F. Supp. 3d at 379. 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. 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 (*i.e.* a country not previously designated in removal proceedings). The Court certified the class.² *Id.* at 386 (“the Court

² 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.).

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 (5th Cir. 1981) (discussing the lack of an opt out under Rule 23(b)(2)). Membership in the class is not waivable. Fed. R. Civ. P. 23(b)(2).

Because the District Court for the District of Massachusetts has certified a class that will address Rios's claims, staying these proceedings would be prudent as a matter of comity. *Cf. Munaf v. Geren*, 553 U.S. 674 at 693 (2008) ("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 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. There is little sense to go forward in this case because the analysis 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.). "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 Rios belongs) allows for consistent treatment and promotes efficiency.

B. The Court Lacks Jurisdiction.

1. 8 U.S.C. § 1252(g) Bars Review of Challenges to the Execution of Removal Orders

Since Rios challenges the execution of the removal order, this Court lacks jurisdiction under 8 U.S.C. § 1252(g).³ 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,

³ 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.

and hence prolongation of removal proceedings.” *AADC*, 525 U.S. at 487. Thus, by its plain terms, § 1252(g) bars Rios’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”).⁴

Because Rios’s challenge is to the execution of a final removal order, i.e., detention pending removal to El Salvador, this action is barred by the plain terms of § 1252(g) and this Court lacks jurisdiction.

2. 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 Rios’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

⁴ At least one court in this district recently declined jurisdiction related to the execution of a removal order in the context of granting injunctive relief from imminent removal or transfer from the district, citing Section 1252(g). See *Oliveira v. Patterson, et al*, 6:25-cv-01463 *2 (W.D.La. Oct. 9, 2025) (“But even if it were inclined to enjoin Petitioner’s removal, this Court lacks jurisdiction under 8 U.S.C. § 1252(g) to “hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to ... execute removal orders against any alien.” See *Alvidres-Reyes v. Reno*, 180 F.3d 199, 201 (5th Cir. 1999)). Decision attached as Exhibit D.

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) (emphasis in original); *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, Rios’s theoretical argument regarding a potential fear-based claim to removal to a third country arguably amounts to an impermissible challenge to the final removal order, over which this Court lacks jurisdiction. Accordingly, this Court lacks jurisdiction under §§ 1252(a)(5) and (b)(9).

III. The REHAB Act does not apply to Petitioner.

Rios claims the Government is violating Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, (the REHAB Act), which prohibits recipients of federal funds from excluding individuals from participation in, denying them the benefits of, or subjecting them to discrimination under any program or activity on the basis of disability. And due to the alleged violations of the REHAB Act, Rios claims release from custody is the only appropriate remedy. However, this argument is flawed because the REHAB Act does not apply to Rios or these circumstances for several reasons.

First, the REHAB Act does not create a private right of action” to challenge agencies “acting as conductors of federal programs,” i.e., for non-employment, non-funding actions. *Doe v. Spahn*, Civ. A. No. 23-2859 (CJN), 2025 WL 1305360, at *4 (D.D.C. May 6, 2025); *see also, e.g., Mathis v. U.S. Parole Comm’n*, 749 F. Supp. 3d 8, 19 (D.D.C. 2024). In this case, Rios’s claims clearly are not related to employment or federal funding, and therefore no private right of action exists under the REHAB Act.

Second, the purpose of the REHAB Act is not intended to be applied to illegal aliens pending removal from the country. Instead, the purposes of the Act, as intended by Congress, are enumerated in the statute at 29 U.S.C. § 701(b) and specify that the Act is intended to empower individuals with

disabilities to maximize education and employment opportunities (which are inherently unavailable to removable aliens) and promote economic self-sufficiency. *See* 29 U.S.C. § 701(b)(1)-(5). In fact, Rios misstates the definition of “disability” under the REHAB Act as it applies to Section 794 and the claims at issue in this case, incorrectly using the definition of disability found in the Americans with Disabilities Act, 42 U.S.C. § 12102 (ADA). (ECF 1, ¶73). However, the REHAB Act defines “disability” as “a physical or mental impairment that constitutes or results in a substantial impediment *to employment*”. (emphasis added); 29 U.S.C. §§ 705(9)(A) and (20) (similarly defining “individual with a disability” as one with an impairment that results in a substantial impediment to employment”). The ADA definition of disability cited by Rios is only applicable for purposes of sections 701 (“Findings; purpose; policy”), 711 (“Evaluation”), and 712 (“Information Clearing House”) of the REHAB Act. *See* 29 U.S.C. § 705(9)(B). However, Rios purports to bring a claim under Section 794 (“Nondiscrimination under Federal Grants and Programs”), which specifically applies the definition of individual with a disability contained in §705(20) and requires a “substantial impediment to employment”. Section 794 does *not* apply the definition from the ADA that Rios relies on which only requires a limitation on one or more major life activities. *Compare* 29 U.S.C. § 705(20) (requiring an impediment to employment) with 42 U.S.C. § 12102(1) (requiring a limitation to one or more major life activities). Where the context shows that Congress has employed a term of art, any specialized meaning will prevail over the common and ordinary meaning. *See Garcia v. Vanguard Car Rental USA, Inc.*, 540 F.3d 1242, 1246 (11th Cir. 2008) (noting that Congress “presumptively adopts” the meaning of specialized terms it uses); *United States v. Cuomo*, 525 F.2d 1285, 1291 (5th Cir. 1976) (“The sense of a word that is commonly used as a term of art in a particular discipline is the relevant sense for purposes of statutory construction, where the statute being construed deals with that discipline.”). Accordingly, the proper definition and context for the terms “disability” and “individual with a disability” in the REHAB Act as utilized by Congress in Section 794 clearly only relate to the

individual's ability to be employed, and must be applied as such and exclude Rios, who is not seeking employment from ICE and has not alleged any substantial impediment to employment due to the alleged gender dysphoria. Going further, Rios misapplies the DHS regulations for enforcement of the REHAB Act, similarly glossing over the appropriate definition of "qualified individual with a disability" under 6 C.F.R. § 15.3 which is necessary to determine whether an individual qualifies for the protections intended by the prohibitions contained in the REHAB Act and 6 C.F.R. §15.30. *See* 6 C.F.R. § 15.30(a) ("No *qualified individual with a disability*.....") (emphasis added).

Moreover, even if the REHAB Act applied to a deportable alien detained in custody pending removal and provided that alien with a private right of action against ICE (which is denied), the REHAB Act does not cover gender dysphoria. The REHAB Act specifically excludes individuals from being considered an "individual with a disability" on the basis of "gender identity disorders not resulting from physical impairments" and "transsexualism" for the purposes of Section 794. *See* 29 U.S.C. § 705(20)(F)(i). Therefore, gender dysphoria, which is the medical diagnosis for stress caused by a mismatch between a person's gender identity and his or her assigned sex, is clearly a gender identity disorder not resulting from any physical impairment which is specifically excluded from Section 794 of the REHAB Act. Furthermore, whether Rios has a true "gender dysphoria" diagnosis, a Complex Post Traumatic Stress Disorder (C-PTSD), or Major Depressive Disorder (MDD) as testified by Rios's expert has not yet been properly determined in this matter. Rios filed an affidavit of Darien Combs, Ph.D. with the Petition. (ECF 1-2, Exhibit A). However, this affidavit contains purported expert testimony, and the Government has not been given an opportunity to engage in the discovery necessary to verify (and challenge if necessary) whether the expert testimony in the Affidavit of Darien Combs, Ph.D. and the diagnoses contained therein are based on sufficient facts or data and use reliable principals and methods pursuant to Federal Rule of Evidence 702.

Finally, Rios alleges that, under Section 794 of the REHAB Act, the purported diagnoses of PTSD and MDD require reasonable accommodations including gender affirming care and housing separate from male detainees, which Rios argues are precluded due to the provisions of Executive Order No. 14169. (ECF 1, ¶85). However, these accommodations are intrinsically intertwined with Rios's alleged gender dysphoria and gender identity issues such that they are excluded under the REHAB Act as explained above. *See* 29 U.S.C. §§ 794(a), 705(20). Accordingly, Rios's claims for release under the REHAB Act should be denied.

CONCLUSION

Rios seeks release from post-removal order detention. The provisions of 8 U.S.C. §1231 and the Supreme Court opinion in *Zadvydas* provide Rios the only appropriate standard for relief. Rios, however, does not satisfy the requirements of the *Zadvydas* standards and cannot meet the applicable burden. Moreover, Rios is a member of the *D.V.D.* class and the claims made in the Petition do not fall under the REHAB Act. Consequently, this petition for writ of habeas corpus seeking release from ICE custody should be denied and dismissed.

Respectfully submitted,

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