UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ISRAEL GODINEZ PEREZ,

Plaintiff,

v. Case No. 2:25-cv-429-JES-NPM

KRISTI NOEM, Secretary, Department of Homeland Security ("DHS") and GARRETT RIPA, Miami Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"),

Defendants.
_____/

Motion to Dismiss

Defendants Kristi Noem, Secretary of DHS, and Garrett Ripa, Miami Field Office Director of ICE, move to dismiss because the Court lacks subject-matter jurisdiction.[1] Fed. R. Civ. P. 12(b)(1). Specifically, ICE moves to dismiss for lack of facial and factual jurisdiction. Plaintiff Israel Godinez Perez opposes the Motion.

Background

This is an immigration habeas case. Godinez Perez is a Mexican citizen and national. (Doc. 1 at 3). In 1999, he entered the United States without inspection. (*Id.*).

In March 2007, Godinez Perez received an I-862, Notice to Appear, and was placed in removal proceedings. (Ex. 1). The immigration judge ("IJ") then received

[1] ICE is an agency within DHS. This Motion refers to both as ICE without differentiation as the distinction between the entities is irrelevant for these purposes.

his I-589, Application for Asylum and Withholding of Removal. (Doc. 1 at 3).

The IJ ordered removal and denied the I-589 application. (*Id.*). Godinez Perez appealed to the Board of Immigration Appeals ("BIA"). (*Id.*). The BIA vacated and remanded back to the IJ on the I-589 decision. (*Id.* at 4). On September 24, 2010, the IJ issued another removal order but granted withholding of removal to Mexico. (Doc. 1-1 at 2). Neither party appealed—making this Godinez Perez's final order of removal to somewhere other than Mexico. (Doc. 1 at 4).

At that time, Godinez Perez was not detained. (*Id.*) ("That following the entry of a final order against him, Petitioner was not detained pursuant to the administratively final order of removal."). There are no allegations of any custodial detention or arrest at any point before 2025. In fact, ICE did not detain Godinez Perez during that fifteen-year period.

Around April 25, 2025, Florida Highway Patrol encountered Godinez Perez during a traffic stop. (*Id.*).[2] He was then placed in ICE custody. (*Id.*). Currently, Godinez Perez is detained at Krome North Service Processing Center.[3] On June 1, ICE notified Godinez Perez in writing that it intended to remove him to Guatemala. (Ex. 2). On June 5, the Guatemalan Consulate denied ICE's request. (*Id.*). ICE is continuing to investigate his removal to another third country.

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[2] As ICE understands it, this stop occurred on April 27. Yet the distinction is irrelevant to the outcome. So ICE uses the date most favorable to Godinez Perez.

[3] For a few weeks, Godinez Perez was held at Glades County Detention Center—which is where he was when he filed this action. (Doc. 1 at 5).

Shortly before ICE notified him of potential removal to Guatemala, Godinez Perez filed this action.

Legal Standard

Over the years, this Court stated the standard many times:

> Rule 12 (b)(1) of the Federal Rules of Civil Procedure provides for dismissal of an action if a court lacks subject matter jurisdiction, whether as a facial or factual challenge. In a facial challenge, a court must consider the allegations of the plaintiff's complaint as true and merely look and see if the plaintiff has sufficiently alleged a basis of subject matter jurisdiction. By contrast, a factual attack challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered.

Clements v. Glass, No. 2:24-cv-197-JES-NPM, 2025 WL 1068822, at *2 (M.D. Fla. Apr. 8, 2025) (Steele, J.) (cleaned up).

Discussion

Godinez Perez lodges two express challenges: his detention (1) beyond certain deadlines violates the Fifth Amendment due process clause and (2) over six months violates the Fourth Amendment as an unreasonable detention. (Doc. 1 at 9). These claims (and any others) fail.

ICE is detaining Godinez Perez pending removal—which is allowed. 8 U.S.C. § 1231(a)(6) (permitting detention). Because Godinez Perez has a withholding of removal to his native Mexico, ICE is working to remove him to a third country—which is again allowed. *Id.* § 1231(b)(2) (permitting third-country removal and specifying various requirements); 8 C.F.R. § 240.10(f). To do so, ICE must find any "country whose government will accept the alien into that country." *Id.*

§ 1231(b)(2)(E)(vii); *see also Jama v. ICE*, 543 U.S. 335, 341-45 (2005). There are, however, certain restrictions on third-country removals when an alien's life, liberty, or freedom from torture would be threatened. 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(c), 208.17, 1208.16(a)-(c), 1208.17. But those restrictions are inapplicable; ICE is seeking an appropriate, willing country to accept Godinez Perez.

For the reasons described below, the Court has no jurisdiction over this action.

A. Lack of Jurisdiction

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They "possess only that power authorized by Constitution and statute." *Id.* (citations omitted).

In the context of immigration habeas cases related to removal—like here—the Immigration and Nationality Act ("INA") divests this Court's jurisdiction. 8 U.S.C. §§ 1252(b)(9), (g). As discussed, the Court lacks jurisdiction over Godinez Perez's claims—which challenge his detention to execute a final order of removal.

1. Jurisdiction Stripping Under § 1252(g)

There is no jurisdiction to review "any" claim "arising from the decision or action" to "execute removal orders." 8 U.S.C. § 1252(g). This provision bars habeas review in federal courts when the claim arises from a decision or action to "execute" a final order of removal. *Reno v. American-Arab Anti-Discrimination Committee (AADC)*, 525 U.S. 471, 482 (1999).

Courts consistently hold that § 1252(g) eliminates subject-matter jurisdiction over challenges—including constitutional claims—to an arrest or detention for the

purpose of executing a final removal order. *E.g.*, *Camarena v. ICE*, 988 F.3d 1268, 1273-74 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order."); *Johnson v. U.S. Attorney General*, 847 F. App'x 801, 802 (11th Cir. 2021); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013).[4] Likewise, § 1252(g) precludes review of the method by which ICE chooses to commence removal proceedings. *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, the provision bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Godinez Perez was detained to execute the final removal order against him. He is well within the presumptively reasonable period of detention (as detailed below). And ICE is in the process of executing removal by finding a third country to accept Godinez Perez. This action is an effort to interfere with or halt that legal process. The INA plainly strips the Court's jurisdiction in these instances. 8 U.S.C. § 1252(g).

The Court lacks jurisdiction for a separate reason.

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[4] *See also Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review."); *Tazu v. U.S. Attorney General*, 975 F.3d 292, 297 (3d Cir. 2020) ("The plain text of § 1252(g) covers decisions about whether and when to execute a removal order."); *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

2. Jurisdiction Stripping Under § 1252(b)(9)

There is no jurisdiction to review "all questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States" outside a case reviewing the final removal order. 8 U.S.C. § 1252(b)(9). This is known as the "zipper clause." *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020). The zipper clause is "a jurisdictional bar where" petitioner seeks "review of an order of removal [or] the decision to seek removal." *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 19 (2020) (cleaned up).

There is a single path for judicial review of removal orders—"a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). Reading § 1252(a)(5) and (b)(9) together, courts conclude petitioners must funnel all aspects of challenges to removal proceedings through that avenue. *Nasrallah v. Barr*, 590 U.S. 573, 580 (2020) ("The REAL ID Act clarified that final orders of removal may not be reviewed in district courts, even via habeas corpus, and may be reviewed only in the courts of appeals."); *see also Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005) (There is "clear intent to have all challenges to removal orders heard in a single forum (the courts of appeals).").

The zipper clause encompasses more than § 1252(g). *AADC*, 525 U.S. at 483. Under these provisions, "most claims that even relate to removal" are improper in a district court. *E.O.H.C. v. DHS*, 950 F.3d 177, 184 (3d Cir. 2020). There are limitations on how broadly courts interpret the zipper clause. *E.g. Canal A*, 964 F.3d at 1257. But a claim obviously "arises from a removal proceeding when the parties are challenging

removal proceedings." *Id.* (cleaned up); *see also Regents of Cal.*, 591 U.S. at 19.

Here, Godinez Perez challenges the Government's execution of his final removal order to stop the removal process. These are the exact claims barred by the zipper clause. 8 U.S.C. § 1252(b)(9).

3. Conclusion of Jurisdiction Stripping

As discussed above, Godinez Perez's claims fall squarely within the INA's jurisdiction-stripping provisions of 8 U.S.C. §§ 1252(g) and (b)(9). The Court, therefore, lacks subject-matter jurisdiction and must dismiss.

B. Lawful Detention

Even if the Court disagrees with the above, it must still dismiss; Godinez Perez's detention is lawful, so any habeas claim is premature. He cannot argue otherwise.

1. Premature Suit

After a final removal order, an alien must be removed within ninety days—i.e., the removal period. 8 U.S.C. § 1231(a)(1); *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001). During the removal period, the alien must be detained. 8 U.S.C. § 1231(a)(2); *Zadvydas*, 533 U.S. at 683. An alien, however, can be detained beyond that removal period. 8 U.S.C. §§ 1231(a)(1)(C), (a)(6); *Zadvydas*, 533 U.S. at 683. This is called a "post-removal" period. *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021).

There is no statutory limit on how long ICE can detain an alien during the post-removal period. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). Yet indefinite detention would present obvious constitutional concerns. *Id.* So the Supremes interpret this post-removal period to allow extended detention for "a period reasonably

necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. In all, a reasonable length of detention "is presumptively six months." *Guzman Chavez*, 594 U.S. at 529; *see also Akinwale*, 287 F.3d at 1052 (stating six-month period is inclusive of any ninety-day removal period).

If the presumptively reasonable period expires without removal, then a burden-shifting framework comes into play regarding the "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 689. But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale v. Ashcroft*, 287 F.3d 1050, 1051-52 (11th Cir. 2002); *Guo Xing Song v. U.S. Attorney General*, 516 F. App'x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009).[5] At bottom, "This presumptively reasonable six month period must have expired at the time of the filing of a petition." *E.g.*, *Jiang v. Mukasey*, No. 2:08-cv-773-FtM-29DNF, 2009 WL 260378, at *2 (M.D. Fla. Feb. 3, 2009) (Steele, J.); *Noel v. Glades Cnty. Sheriff*, No. 2:11-cv-698-FtM-29SPC, 2011 WL 6412425, at *2 (M.D. Fla. Dec. 21, 2011) (Steele, J.).

Godinez Perez sued well before the expiration of six months in detention. He was first detained on April 25 and sued on May 22. (Doc. 1 at 4). At that point, Godinez Perez had only been detained for twenty-eight days. To date, he has been in

[5] Some districts disagree. *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008). Of course, *Akinwale* binds the Court. Even if it didn't, *Cesar* and any progeny are wrong. *Zadvydas* recognized the presumptive six-month period for the specific "sake of uniform administration in the federal courts." *Zadvydas*, 533 U.S. at 701. That was not an invitation to make up exceptions to this ripeness doctrine—like *Cesar* did.

detention for sixty-six days. Either timeline is well under the 180-day period that is presumptively reasonable. That is fatal to jurisdiction. *Akinwale*, 287 F.3d at 1051-52.

Notably, Godinez Perez was not detained during the removal period. He cannot challenge that decision or contend it somehow counts as detention. Doing so would run afoul jurisdiction stripping as a direct attack on (1) the "decision or action" to "execute removal orders" and/or (2) "any action taken . . . to remove an alien." 8 U.S.C. §§ 1252(g), (b)(9); *see also Alvarez*, 818 F.3d at 1203 (holding no jurisdiction over claim on detention pending removal hearing).

In short, this case is clearly premature. And the Court must dismiss.

To the extent that Godinez Perez maintains the relevant timeline start running in September 2010, he is mistaken. That was when his order of removal became final. Godinez Perez, however, was not taken into custody or otherwise detained at that time. His position conflates the removal and post-removal periods (as addressed by statute) with the constitutionally relevant time in detention (as addressed by *Zadvydas*).

For *Zadvydas*, it is not the bare passing of days after a final removal order that matters; rather, it is an alien's actual time in detention that controls. *See Akinwale*, 287 F.3d at 1051 ("Therefore, in order to state a claim under *Zadvydas* the alien not only must show *post-removal order detention in excess of six months* but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." (emphasis added)). *Zadvydas* interpreted constitutional limitations upon § 1231(a)(6)—clarifying "[i]t does not permit indefinite detention" so "detention" is limited "to a period reasonably necessary." 533 U.S. at

689. Put different, *Zadvydas* concerned the constitutionality of detention periods in this context—not technical compliance with the INA. *Id.* at 699 (identifying the ultimate question as "whether the detention in question exceeds a period reasonably necessary to secure removal").

Where—as here—an alien is ordered removed but not detained, the deadlines for purposes of *Zadvydas* run from when ICE actually detains him. *Callender v. Shanahan*, 281 F. Supp. 3d 428, 436 n.7 (S.D.N.Y. 2017).[6] As one court put it:

> Because *Zadvydas* clearly involved detention of a petitioner during the presumptively reasonable period, it defies common sense to suggest that *Zadvydas* time can run while a petitioner is not in custody.

Cheng Ke Chen v. Holder, 783 F. Supp. 2d 1183, 1192 (N.D. Ala. 2011). Holding otherwise would be nonsensical as it would grant due process relief for unreasonable detention over detention that never existed. Put different, the Court would need to conclude ICE was unlawfully detaining Godinez Perez by allowing him to walk around as a free man for the last fifteen years. That ain't *Zadvydas* by any stretch. *Demore v. Kim*, 538 U.S. 510, 528 (2003) (distinguishing because "detention at issue in *Zadvydas* was indefinite and potentially permanent" (cleaned up)); *see also A.R.L. v. Garland*, No. 6:23-CV-00852, 2023 WL 9316859, at *4 (W.D. La. Dec. 20, 2023) ("As

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[6] *See also Rodriguez-Guardado v. Smith*, 271 F. Supp. 3d 331, 335 n.8 (D. Mass. 2017); *Rivera v. Hassell*, No. 4:15-01497-WMA-SGC, 2016 WL 4257692, at *3 (N.D. Ala. July 12, 2016), *R&R adopted*, 2016 WL 4257052 (Aug. 10, 2016); *Chun Yat Ma v. Asher*, No. C11-1797 MJP, 2012 WL 1432229, at *3 (W.D. Wash. Apr. 25, 2012); *Raia v. Aviles*, No. 11-3374 (WJM), 2011 WL 2710275, at *5 & n.9 (D.N.J. July 6, 2011)*Thelemaque v. Barr*, No. 20-20467-CIV-ALTONAGA/Reid, 2020 WL 13551808, at *2 & n.1 (S.D. Fla. Mar. 30, 2020); *Aionesei-Lupu v. Barr*, No. 1:20-cv-22998-BLOOM, 2020 WL 8679783, at *2 (S.D. Fla. July 23, 2020); *Cruz v. Lumpkin*, No. H-23-2224, 2023 WL 4566252, at *1 n.7 (S.D. Tex. July 17, 2023).

discussed, *Zadvydas* only applies when the alien's detention is indefinite or potentially permanent. That is not the case here." (cleaned up)).

What's more, such a principle would effectively eliminate ICE's ability to ever remove an alien unless it does so within the presumptively reasonable timeframe. *Chun Yat*, 2012 WL 1432229, at *3. Again, *Zadvydas* doesn't sweep that broad. It goes without saying an alien must be detained (or otherwise in custody) to effect removal unless the alien leaves voluntarily. If the Court accepts his position, it is unclear how ICE would be able to remove Godinez Perez—which ICE is actively working toward. *But see Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("We think it clear that detention or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens, would be valid. Proceedings to exclude or expel would be vain if those accused could not be held in custody . . . while arrangements were being made for their deportation.").

The statute itself clarifies actual detention is different than other conditions for aliens with removal orders. After the removal period, ICE has options of how to handle the alien. For instance, it may release the alien "subject to supervision." 8 U.S.C. § 1231(a)(3). Alternatively, ICE could continue detention—i.e., the post-removal period detention. *Id.* § 1231(a)(6). Even for those aliens detained during the post-removal period, ICE can release them "subject to the terms of supervision." *Id.* In short, the statute does not create de facto detention status the moment a removal order becomes final. Nor did *Zadvydas* paint that interpretive gloss on the INA. Yet that is precisely what Godinez Perez contends.

Because Godinez Perez was first detained on April 25, his *Zadvydas* challenges to unreasonably prolonged detention are premature. *E.g.*, *Jiang*, 2009 WL 260378, at *2 ("This presumptively reasonable six month period must have expired at the time of the filing of a petition.").

That should end the analysis as it relates to the lawfulness of detention.

2. No Showing Otherwise

While some nonbinding cases disagree, the presumptively reasonable period is not rebuttable before it expires. It is only afterward that the parties can engage in *Zadvydas* burden-shifting related to the "significant likelihood of removal in the reasonably foreseeable future." *See Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018) (citation omitted); *Zadvydas*, 533 U.S. at 701 (holding the inquiry is "[a]fter this 6-month period"). Before that time limit runs, neither *Zadvydas* nor any other binding precent permit a challenge based on reasonable foreseeability of removal. *See Akinwale*, 287 F.3d at 1051-52. In fact, requiring ICE to respond during the presumptively reasonable timeframe would violate jurisdiction stripping, breach separation of powers, and impose unnecessary burdens on ICE during a lawful detention.[7]

Even if the Court disagrees, Godinez Perez cannot show a significant likelihood he will not be removed within the reasonably foreseeable future. Within the last two months, ICE took him into custody with the intention to remove. During that time,

[7] Third-country removals oftentimes demand nuanced and sensitive security and foreign policy considerations. *Kiyemba v. Obama*, 561 F.3d 509, 519 (D.C. Cir. 2009) (Kavanaugh, J., concurring); 8 C.F.R. §§ 241.13, 241.14; *see also Alvarez*, 818 F.3d at 1210.

ICE already attempted to remove Godinez Perez to a third country. That country (Guatemala) denied the request. Still, this demonstrates ICE made—and is continuing to make—an effort to remove within the reasonably foreseeable future. There are no factual allegations to the contrary.

To the extent that the above is insufficient, Godinez Perez made no allegations on any efforts to cooperate with ICE apart from a bare conclusory statement. An unexplained legal conclusion cannot meet a petitioner's showing on this matter. *Ortiz v. Barr*, No. 20-CV-22449-WILLIAMS, 2021 WL 6280186, at *4 (S.D. Fla. Feb. 1, 2021), *R&R adopted* 2022 WL 44632 (Jan. 1, 2022). That alone is sufficient to dismiss.

Plus, removal period time gets suspended if an alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure." 8 U.S.C. § 1231(a)(1)(C). It is the alien's obligation (after a final order of removal) to depart within ninety days or make a timely application for travel documents needed to depart; failure to do either can be a criminal offense. 8 U.S.C. § 1253(a)(1). Put simply, petitioner cannot argue no significant likelihood of removal when "the keys to [his] freedom are in his pocket and he could likely effectuate his removal by providing the information requested." *Singh v. U.S. Attorney General*, 945 F.3d 1310, 1314 (11th Cir. 2019) (cleaned up); *see also Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003).

Whether ICE serves a notice of failure to comply is irrelevant. 8 C.F.R. §§ 241.4(g)(1)(ii) (providing for notice), 241.4(g)(5)(iv) (stating any notice deficiency does not excuse alien's failure); *see also de Souza Neto v. Smith*, No. 17-11979, 2017 WL

6337464, at *1 n. 2 (D. Mass. Oct. 16, 2017) ("Although [petitioner] alleges that ICE did not provide her with a Notice of Failure to Comply under 8 C.F.R. § 241.4(g)(1)(ii) that her removal period has been extended, the lack of notice 'shall not have the effect of excusing the alien's conduct.' 8 C.F.R. § 241.4(g)(5)(iv)."). At bottom, "*Zadvydas* does not save an alien who fails to provide requested documentation to effectuate his removal." *U.S. ex rel. Kovalev v. Ashcroft*, 71 F. App'x 919, 924 (3d Cir. 2003).

Again, there are no factual allegations on whether Godinez Perez made any good-faith efforts to assist in his removal. No allegations address whether he applied for travel documents or suggested any third countries for his removal. Godinez Perez is currently detained by ICE and may cooperate with his removal; yet there is no indication he has done so.

3. Conclusion on Detention Action

As discussed, Godinez Perez's detention is lawful. And the Complaint is devoid any allegations that would support an inference otherwise. So the Court must dismiss.

There is one final matter to address.

C. Possible Due Process Claim on Third-Country Removal

It is unclear whether Godinez Perez raises a specific due process claim regarding notice on third-country removal. (Doc. 1 at 7). To the extent that he does so, the Court must dismiss.

As above, this claim would be premature and unripe. Procedural due process demands (1) notice and (2) opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976). But, "A claim is not ripe for adjudication if it rests upon contingent future

events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998). This principle applies to due process claims too. *E.g.*, *Thorpe v. Hous. Authority of City of Durham*, 393 U.S. 268, 283-84 (1969).

There is no allegation Godinez Perez has been scheduled for removal. Nor does he contend ICE is withholding notice; he could not do so as ICE is still investigating third-country removal. Even if notice were required, there is no indication ICE would not provide it to Godinez Perez before a third-country removal. In fact, ICE offered Godinez Perez written notice before its first effort to remove. (Ex. 2).

As explained, any due process claims related to notice of third-country removal would be premature.

Separate but related, Godinez Perez appears to be a member of a class action pending in Boston. *D.V.D. v. D.H.S.*, No. 25-10676-BEM (D. Mass.). *D.V.D.* is a complicated case related to a nationwide injunction regarding notice before third-country removals. *D.V.D.*, 2025 WL 1142968 (Apr. 18, 2025) (certifying Rule 23(b)(2) class and enjoining). The injunction order required certain notice and opportunity to respond before ICE removed to a third country. *Id.* at *24. Yet the Supreme Court later stayed that injunction. *DHS v. D.V.D.*, No. 24A1153, 2025 WL 1732103 (June 23, 2025). Now litigation is pending to clarify the stay. These matters were just further complicated by the Supremes limiting nationwide injunctions. *Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1773631 (June 27, 2025).

Class actions, of course, have specific rules related to class membership, along with when and how members can opt out. *See generally Juris v. Inamed Corp.*, 685 F.3d

1294, 1329-34 (11th Cir. 2012) (discussing 23(b)(2) classes); *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1152 (11th Cir. 1983). In fact, Rule 23(b)(2) class members have no right to opt out and prosecute an entirely separate case for injunctive or declaratory relief. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1554 (11th Cir. 1986); *see also Demler v. Inch*, No. 4:19cv94-RH-GRJ, 2020 WL 8182121, at *3-4 (N.D. Fla. Dec. 10, 2020).

In short, any remedy that Godinez Perez seeks related to due process requirements for third-country removal must be sought in *D.V.D.* The general class action rules would not permit him to pursue the same remedies outside that suit. And with so much uncertainty surrounding the status of *D.V.D.*—which is still a pending case—this Court should not wade into those ongoing claims.

To the extent that Godinez Perez seeks due process relief for third-country removal, the Court should dismiss without prejudice. *See Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding individual suits for injunctive relief inappropriate where same class action exists). Alternatively, it should stay that portion of the case pending a result in *D.V.D. See Munaf v. Green*, 553 U.S. 674, 693 (2008) ("We have therefore recognized that prudential concerns, such as comity and the orderly administration of criminal justice, may require a federal court to forgo the exercise of its habeas corpus power." (cleaned up)); *see also Cicero v. Olgiati*, 410 F. Supp. 1080, 1099 (S.D.N.Y. 1976) ("Moreover, the very nature of the issue raised requires the consistency of treatment of the subject which Rule 23(b)(2) was

intended to assure.").

As explained, the Court must dismiss any due process claim related to third-country removal.

Conclusion

For those reasons, the Court must dismiss for lack of subject-matter jurisdiction.

Local Rule 3.01(g) Certification

The parties conferred by substantive email and phone to explain their respective positions. They were not able to resolve their dispute, and the Motion is opposed.

Date: June 30, 2025

Respectfully submitted,

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