

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

ISRAEL ADONAY SAGASTIZADO
SANCHEZ,

Petitioner,

v.

KRISTI NOEM, ET AL.,

Respondents.

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CIVIL ACTION NO. 5:25-CV-104

**RESPONDENTS' SUPPLEMENTAL BRIEFING
IN RESPONSE TO COURT'S ORDER OF SEPTEMBER 24, 2025**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Respondents, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement (ICE), Daniel Bible, San Antonio Field Office Director for ICE, Pamela Bondi, Attorney General of the United States, and the unnamed Warden of the Webb County Detention Center, Respondents, in their official capacities, by and through the United States Attorney for the Southern District of Texas, and hereby submit their Supplemental Briefing in Response to Court's Order of September 24, 2025:

On September 24, 2025, this Court issued an Order which continued the Temporary Restraining Order (TRO) and the Preliminary Injunction (PI) Hearing in this case to September 29, 2025. Moreover, the Court requested that the Parties submit supplemental briefing on the following issues by September 26, 2025, at 11:00 a.m.:

1) Whether Petitioner is a member of the certified class in *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025), and what effect, if any, this has on this Court's jurisdiction to hear Petitioner's claims.

The certified class in *D.V.D.* was defined as "All 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." *D.V.D.* at 378. Therefore, it appears that Sagastizado is a member of that certified class.

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts's preliminary injunction pending appeal in the United States Court of Appeals for the First Circuit. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). That same day, the District Court of Massachusetts ordered that its remedial order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* No. 25-cv-10676 (BEM) (ECF No. 176). Defendants moved to clarify the Supreme Court's Order, and on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

The Court should dismiss and deny the relief requested in Sagastizado's petition or stay this action because the relief requested here is basically the same as the relief requested in *D.V.D.* First, this Court should avoid providing Sagastizado with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, Sagastizado challenges how

Respondents should implement his third country removal. That is the precisely the challenge brought by the *D.V.D.* class.

Second, this Court should avoid providing Sagastizado with relief that is likely to be rejected by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case. The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Sagastizado should not be allowed to make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court.

2) Respondents argue that 8 C.F.R. § 1208.3(g) does not apply to Petitioner. In the absence of applying 8 C.F.R. § 1208.3(g), what federal statutes and regulations govern the procedures for removing an individual to a third country who has won withholding of removal. Petitioner may provide their analysis of this question as well.

The Immigration and Nationality Act (INA) provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to various countries including, where other options are unavailable, to any country willing and able to accept them. Title 8 U.S.C. § 1231 governs detention and removal of aliens ordered removed. Section 1231(b) indicates countries to which aliens may be removed. See also 8 C.F.R. § 241.15.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (see 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional, specific process that aliens must receive after a final order of removal has been issued but prior to removal

to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. See 8 U.S.C. § 1231 note. On March 30, 2025, DHS issued guidance detailing its policy in this context. See March Guidance.

3) Please provide additional analysis under the *Matthews v. Eldridge* test on the procedures due when the government is removing an individual who has won withholding of removal to a third country.

Under *Matthews v. Eldridge*, 96 S.Ct. 893, 903 (1976), the specific dictates of due process generally requires consideration of three distinct factors: First the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* at 902, citing *Morrissey v. Brewer*, 408 U.S. 471,481 (1972).

Initially as to the private interest factor, Sagastizado has a significant private interest in being free from detention. See *Hamdani v. Rumsfeld*, 542 U.S. 507,529 (2004). As to the second factor, risk of erroneous deprivation of such an interest through the procedures used, Sagastizado was granted withholding of removal to El Salvador in his removal proceeding. DHS has designated Mexico as a third country for his removal and gave Sagastizado notice of that fact. Sagastizado was given an opportunity to express fear of persecution or torture if he was removed to Mexico, and he expressed such a fear (he has also indicated fear of being removed to virtually all countries in Central and South America). He was interviewed by a USCIS Asylum Officer, but Sagastizado did not meet his burden to show that he would be persecuted or tortured in Mexico.

See *Gonzalez-Soto v. Lynch*, 841 F.3d 682,683 (5th Cir. 2016) (To qualify for withholding of removal, an alien “must demonstrate a ‘clear probability’ of persecution upon return”), quoting *Roy v. Ashcroft*, 389 F.3d 132, 138 (5th Cir. 2004).

The third factor is the Government’s interest. The Supreme Court has recognized that [t]here is always a public interest in prompt execution of removals. *Nken v. Holder*, 556 U.S. 418, 436 (2009). This is so because delays in removing illegal alien detainees is to permit and prolong a continuing violation of United States law. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 490 (1999). And deportation is necessary to end such an ongoing violation. *Id.* at 491.

4) Please identify any known federal court opinions or orders – prior to or after the March Guidance – in which the government has removed an individual to a third country after the individual was granted withholding of removal as a form of relief.

See *Mahdejian v. Bradford*, 2025 WL 2269796 (E.D. Tex. July 3, 2025), *Misirbekov v. Venegas*, 2025 WL 2201470 (S.D. Tex. August 1, 2025), *Misirbekov v. Venegas*, 2025 WL 2450991 (S.D. Tex. August 15, 2025).

5) Please identify any known administrative guidance issued before the March Guidance on the procedures for removing individuals to a third country after a grant of withholding of removal.

See 8 U.S.C. § 1231(b)(1)(C). See also *Jama v. Immigration & Customs Enforcement*, 543 U.S. 335 (2005).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **RESPONDENTS' SUPPLEMENTAL BRIEFING IN RESPONSE TO COURT'S ORDER OF SEPTEMBER 24, 2025** in the case of ISRAEL ADONAY SAGASTIZADO SANCHEZ v. KRISI NOEM, ET AL, Civil Action Number 5:25-CV-104, was sent to Simon Y. Sandoval-Moshenberg, Murray Osorio PLLC, 4103 Chain Bridge Road, Suite 300, Fairfax, Virginia 22030, by electronic mail through the District Clerk's electronic case filing system, on this the 26th day of September, 2025.