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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF ARIZONA**

19 Juan Sanchez-Hernandez,

20 Petitioner,

21 v.

22 Fred Figueroa, et al.,

23 Respondents.

No. 2:25-cv-02351-PHX-DWL (MTM)

**RESPONSE TO AMENDED PETITION
FOR WRIT OF HABEA CORPUS**

24 Respondents Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field
25 Office Director, U.S. Immigration and Customs Enforcement (“ICE”), U.S. Department of
26 Homeland Security (“DHS”); Kristi Noem, Secretary of DHS; and Pam Bondi, Attorney
27 General of the United States (“Respondents”), by the through undersigned counsel, respond
28 in opposition to Petitioner’s Amended Petition for Writ of Habeas Corpus (Doc. 21). The
Court previously granted Counts One, Two and Three of the Amended Petition and ordered
Petitioner released from immigration detention. *See* Doc. 33. The Court dismissed Count
Four of the Amended Petition as moot in light of Petitioner’s release. *Id.* Thus, only Count
Five, which challenges the procedures related to third-country removal remains to be

1 decided.

2 **I. FACTUAL BACKGROUND**

3 Petitioner Juan Sanchez-Hernandez is a native and citizen of Honduras.¹ Doc. 19 at
4 Ex. A ¶ 5. In 1999, Petitioner entered the United States without inspection. Doc. 19 at Ex.
5 B. On July 7, 2003, Petitioner filed Form I-821, Application for Temporary Protected
6 Status, with United States Citizenship and Immigration Services (“USCIS”), which was
7 approved until January 5, 2005, and later renewed through July 5, 2006. Doc. 19 at Ex. A
8 ¶¶ 7, 8.

9 On August 15, 2005, the Phoenix Police Department arrested Petitioner for the
10 offenses of kidnapping, kidnapping to inflict death, physical injury, or a sexual offense on
11 the victim, or to otherwise aid in the commission of a felony, two counts of molestation of
12 a child, and four counts of sexual conduct with a minor. Doc. 19 at Ex. A ¶ 9. In July 2006,
13 the Maricopa County Superior Court convicted Petitioner (then age 23), of two counts of
14 attempted sexual conduct with a minor under age 15 and one count of child molestation.
15 For these offenses, the court sentenced Petitioner to 17 years of incarceration, lifetime
16 probation, and lifetime registration as a sex offender. Doc. 19 at Ex. A ¶ 10. After notice
17 to Petitioner, USCIS revoked Petitioner’s Form I-821. Doc. 19 at Ex. A ¶¶ 11, 12.

18 In February 2008, Petitioner was issued a Form I-851, Notice of Intent to Issue a
19 Final Administrative Removal Order, charging her with violating Section 237(a)(2)(A)(iii)
20 of the Immigration and Nationality Act (“INA”) 8 U.S.C. § 1227(a)(2)(A)(iii), as a non-
21 citizen who has been convicted of an aggravated felony as defined in Section 101(a)(43)(A)
22 of the INA, 8 U.S.C. § 1101(a)(43)(A), a law relating murder, rape, or sexual abuse of a
23 minor. Doc. 19 at Ex. A ¶ 14.

24 In August 2022, the Arizona Department of Corrections released Petitioner to ICE
25 custody pursuant to an ICE detainer. Doc. 19 at Ex. A ¶¶ 13, 15. Petitioner was issued a
26 Final Administrative Order of Removal pursuant to 8 U.S.C. § 1228(b). Doc. 19 at Ex. C.

27 _____
28 ¹ Petitioner identifies as transgender and, accordingly, will be referred to with female
pronouns in this response.

1 During processing, Petitioner expressed a fear of returning to Honduras. Doc. 19 at Ex. A
 2 ¶ 15. Petitioner was found to have a credible fear and was referred to an Immigration Judge
 3 (“IJ”), who denied her request for withholding of removal but granted her deferral of
 4 removal to Honduras under the Convention Against Torture (“CAT”).² Doc. 19 at Ex. A
 5 ¶¶ 16-18; Doc. 2 at Ex. 1. In January 2023, Petitioner was released from immigration
 6 detention on an Order of Supervision (“OSUP”) because ICE had not been able to locate a
 7 third country to which to remove Petitioner. Doc. 19 at Ex. A ¶¶ 19-21; Doc. 19 at Ex. D;
 8 Doc. 2 at Ex. 3. On June 19, 2025, Petitioner was detained by ICE. Doc. 19 at Ex. A ¶ 23.
 9 On June 29, ICE attempted to remove Petitioner to Mexico, but Petitioner claimed a fear
 10 of removal to Mexico. Doc. 19 at Ex. A ¶ 26. On August 1, 2025, Petitioner received a
 11 credible fear interview and was found to have a credible fear of removal to Mexico. Ex. A,
 12 Decl. of Christopher Fleury, at ¶¶ 6, 7. On September 12, 2025, ICE moved to reopen
 13 Petitioner’s removal proceedings to have an immigration judge rule on any applications for
 14 relief related to Petitioner’s fear of removal to Mexico. *Id.* at ¶ 8. Currently, ICE only
 15 intends to remove Petitioner to Mexico if an immigration judge orders her removed there.
 16 *Id.* at ¶ 9.

17 Petitioner filed this habeas action on July 7, 2025. Doc. 1. On July 23, 2025,
 18 Petitioner filed an Amended Petition for Writ of Habeas Corpus and Complaint for
 19 Declaratory and Injunctive Relief (Doc. 21) asserting five causes of action: (1) unlawful
 20 redetention; (2) violation of procedures for revocation of release; (3) violation of the
 21 Immigration and Nationality Act (“INA”) and applicable regulations; (4) procedural due
 22 process/unconstitutionally indefinite detention; (5) procedural due

23
 24 ² CAT protection or withholding under Section 1231(b)(3) does not alter *whether* an alien
 25 may be removed; it affects only *where* an alien may be removed to. That is, a grant of CAT
 26 protection “means only that, notwithstanding the order of removal, the noncitizen may not
 27 be removed to the designated country of removal, at least until conditions change in that
 28 country.” *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United States remains free to
 remove that alien “at any time to another country where he or she is not likely to be
 tortured.” *Id.* (citation omitted); see *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6
 (1987). Thus, the alien remains removable as an alien with a final order of removal.

1 process/unconstitutionally inadequate procedures regarding third country removal.
2 Petitioner also renewed her motion for a temporary restraining order and preliminary
3 injunction seeking her immediate release from immigration detention and enjoining her
4 removal to a third country without having received “constitutionally-compliant
5 procedures.” Doc. 22 at 3. The Court granted the Amended Petition and Motion for
6 Temporary Restraining Order and Preliminary Injunction as to Petitioner’s detention-
7 related claims (Counts One, Two, and Three), dismissed as moot Count Four, and denied
8 the request for a temporary restraining order and preliminary injunction as to Count Five.
9 *See* Doc. 33.

10 As to Count Five, the Amended Petition seeks a Court order “not to let Petitioner
11 be summarily removed to any third country unless and until she is provided with
12 constitutionally adequate procedures.” Doc. 21 at ¶ 105; *see also* Doc. 21 at ¶ 3 (asking the
13 Court to lengthen and make permanent the Court’s July 15, 2025 order requiring the
14 Government to provide 3 business days’ notice prior to removal to a third country); Doc.
15 21 at Prayer for Relief (j)(a)-(d) (outlining the procedures requested by Petitioner,
16 including 21-days’ advance written notice to Petitioner and her counsel in “a language she
17 can understand” of the third country to which she may be removed, a meaningful
18 opportunity to raise a fear-based claim under CAT, and an opportunity to reopen her
19 removal proceedings to challenge a negative fear determination).

20 **II. THE COURT LACKS JURISDICTION TO STAY PETITIONER’S** 21 **REMOVAL.**

22 **1. 8 U.S.C. § 1252(g) bars review of Petitioner’s challenge to the** 23 **execution of her removal order.**

24 Petitioner’s claim seeking a stay of removal pending the completion of extra-
25 statutory procedures to remove her is barred by 8 U.S.C. § 1252(g). Congress spoke clearly
26 that “no court” has jurisdiction over “any cause or claim” arising from the execution of
27 removal orders, “notwithstanding any other provision of law,” whether “statutory or
28 nonstatutory,” including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g).
Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review

1 under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative
2 Procedure Act) of claims arising from a decision or action to “execute” a final order of
3 removal. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S.
4 471, 482 (1999).

5 Count Five of the Amended Petition seeks to require ICE to provide Petitioner with
6 additional procedures prior to her removal, *see* Doc. 21 at Prayer for Relief at (j). But
7 numerous courts of appeals, including the Ninth Circuit, have consistently held that claims
8 seeking a stay of removal—even temporarily to assert other claims to relief—are barred by
9 Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section
10 1252(g) barred petitioner’s claim seeking a temporary stay of removal while he pursued a
11 motion to reopen his immigration proceedings); *Camarena v. Dir., Immigr. & Customs*
12 *Enft*, 988 F.3d 1268, 1274 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider
13 ‘any’ cause or claim brought by an alien arising from the government’s decision to execute
14 a removal order. If we held otherwise, any petitioner could frame his or her claim as an
15 attack on the government’s *authority* to execute a removal order rather than its *execution*
16 of a removal order.”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting
17 petitioner’s argument that jurisdiction remained because petitioner was challenging DHS’s
18 “legal authority” as opposed to its “discretionary decisions”); *Tazu v. Att’y Gen. United*
19 *States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that “the discretion to decide *whether*
20 to execute a removal order includes the discretion to decide *when* to do it” and that “[b]oth
21 are covered by the statute”) (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869,
22 874-77 (6th Cir. 2018) (vacating district court’s injunction staying removal, concluding
23 that § 1252(g) stripped district court of jurisdiction over removal-based claims and
24 remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938,
25 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the
26 execution of a final order of removal, and language barring “any cause or claim” made it
27 “unnecessary for Congress to enumerate every possible cause or claim”).
28

1 **2. The Foreign Affairs Reform and Restructuring Act of 1998**
 2 **precludes Petitioner’s claims related to additional CAT process.**

3 Petitioner’s claim seeking an order from the Court requiring Respondents to provide
 4 her with additional procedures beyond what CAT provides run afoul of Section 2242(d) of
 5 the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), which implements
 6 Article 3 of CAT and provides that:

7 Notwithstanding any other provision of law, and except as provided [by
 8 regulation], *no court shall have jurisdiction to review the regulations*
 9 *adopted to implement this section, and nothing in this section shall be*
 10 *construed as providing any court jurisdiction to consider or review claims*
 11 *raised under the Convention or this section[.]*

12 FARRA § 2242(d), codified at 8 U.S.C. § 1231 (note) (emphasis added). *See Trinidad y*
 13 *Garcia v. Thomas*, 683 F.3d 952, 959 (9th Cir. 2012) (concurrence, discussing same).

14 Any judicial review of any claim arising under CAT is available exclusively on an
 15 individualized basis “as part of the review of a final order of removal” in the courts of
 16 appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same
 17 for “any other determination made with respect to the application of [CAT]”); *cf.*
 18 *Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, “no court” has
 19 jurisdiction to review DHS’s implementation of CAT, yet that is precisely what Petitioner
 20 seeks here by asking the Court to order ICE to comply with additional procedures so that
 21 Petitioner may seek withholding of removal under CAT to a third country.

22 Notably, CAT is not self-executing. *See Borjas-Borjas v. Barr*, No. 20-cv-0417-
 23 TUC-RML (CK), 2020 WL 13544984, at *5 (D. Ariz. Oct. 6, 2020) (discussing same). Its
 24 effect, if any, depends on implementation via domestic law. Congress thus worked well
 25 within its authority to limit judicial review of CAT regulations and CAT claims. Because
 26 Petitioner seeks *additional* procedures beyond what CAT provides, she is challenging the
 27 implementation of CAT as applied to her, which is barred by FARRA.

28 **III. PETITIONER IS A D.V.D. CLASS MEMBER, SO HER DUPLICATIVE**
 29 **CLAIM REGARDING THIRD COUNTRY REMOVAL IS FORECLOSED**
 30 **BY THE PARALLEL CASE.**

31 Petitioner seeks to compel Respondents to provide Petitioner with additional, extra-

1 statutory procedures prior to removal from the United States to a third country,³ but
 2 because that claim is already being adjudicated in the nationwide *D.V.D.* class action, this
 3 Court should decline to consider it. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.); *see*
 4 *also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district court “has broad
 5 discretion to stay proceedings as an incident to its power to control its own docket). As part
 6 of district courts’ discretion to administer their dockets, courts have dismissed, without
 7 prejudice, suits brought by individuals whose claims are duplicative of class claims in other
 8 litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case,
 9 discussing prior stay of Fifth Amendment challenge pending completion of pending class
 10 action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *4-6
 11 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL 319917 (C.D.
 12 Cal. Jan. 18, 2023) (dismissing habeas case brought by federal prisoner related to COVID-
 13 19 measures reasoning that petitioner’s claims were based, in part, on a duplicative class
 14 action and were “not property before the court.”).

15 Multiple courts of appeals have upheld dismissals of cases where parallel class
 16 actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d
 17 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of
 18 [the] complaint which duplicate the [class action’s] allegations and prayer for relief”);
 19 *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits

20 ³ In the INA, Congress has enacted provisions governing the determination of the country
 21 to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. &*
 22 *Customs Enf’t*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United
 23 States (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute
 24 establishes sequences of countries where an alien shall be removed, subject to certain
 25 disqualifying conditions (e.g., the receiving country will not accept the alien). For instance,
 26 under Section 1231(b)(2), possible countries of removal can include a country designated
 27 by the alien, the alien’s country of citizenship, the alien’s previous country of residence,
 28 the alien’s country of birth, and the country from which the alien departed for the United
 States. *See* 8 U.S.C. § 1231(b)(2). Under both Section 1231(b)(1) and (b)(2), Congress
 provided a fail-safe option in the event that other options do not work: An alien may be
 removed to any country willing and able to accept her. *See* 8 U.S.C. § 1231(b)(1)(C)(iv),
 (2)(E)(vii).

1 for injunctive and declaratory relief cannot be brought where a class action with the same
2 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class
3 action has been certified, “[s]eparate individual suits may not be maintained for equitable
4 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot
5 relitigate issues raised in a class action after it has been resolved, a class member should
6 not be able to prosecute a separate equitable action once his or her class has been
7 certified”).

8 Petitioner’s claim seeking to delay or otherwise prohibit her removal to a third
9 country until ICE complies with extra-statutory procedures substantially overlaps with the
10 nationwide class action, *D.V.D.* Indeed, on April 18, 2025, the court in *D.V.D.* certified,
11 pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

12 All individuals who have a final removal order issued in proceedings under
13 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
14 proceedings) whom DHS has deported or will deport on or after February 18,
15 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.

16 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at
17 *11 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL
18 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025
19 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*
20 *Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,
21 2025). Petitioner makes no mention of her class membership in her Petition or Motion.

22 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D.*, 2025 WL
23 1142968, at *14, 18, and 25, membership in the class is mandatory with no opportunity to
24 opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that Rule
25 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not
26 even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v. Whoop,*
27 *Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025) (noting
28 that “23(b)(2) class members have no opportunity to opt out”).

1 The *D.V.D.* court entered a nationwide preliminary injunction requiring DHS to
2 comply with various procedures prior to removing a class member to a third country. The
3 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in
4 the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec. v. D.V.D.*,
5 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class,
6 Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants,
7 including any applicable injunctive relief. Accordingly, this Court should dismiss her
8 claims seeking additional procedures prior to her removal to a third country because they
9 are subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine
10 what Rule 23 was intended to ensure: consistency of treatment for similarly situated
11 individuals. See *Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL
12 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel
13 litigation in district courts all over the country which could ultimately threaten the
14 certification of the underlying class by creating differences among the class members.

15 Because Petitioner is bound as a member of the non-opt out class of individuals
16 governed by the *D.V.D.* nationwide preliminary injunction, this Court should dismiss
17 Count Five since another court is already considering Petitioner's alleged constitutional
18 right to extra-statutory procedures before removal to a third country. Further, Petitioner has
19 already received the relief requested. She was notified of ICE's intention to remove her to
20 a third country (Mexico), received a credible fear interview, and is now waiting for her
21 immigration proceedings to be reopened. Because of this, it is unnecessary for the Court to
22 issue the relief requested to Petitioner because, as to removal to Mexico, her claim is moot,
23 and as to removal to any other third country, her claim is not ripe.

24 **IV. Conclusion.**

25 In light of the foregoing, the Court should deny Count Five and dismiss this action.
26 Respectfully submitted this 12th day of September, 2025.

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