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14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 Juan Sanchez-Hernandez
17 Petitioner,

18 v.

19 Fred Figueroa, et al.,
20 Respondents.

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

**PETITIONER'S REPLY TO
RESPONSE TO PETITION FOR
HABEAS CORPUS**

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1 On August 5, 2025, this Court declared Petitioner the prevailing party on Counts
2 One through Three of the Amended Petition and ordered that “Petitioner is therefore
3 ordered released from custody, subject to the conditions of release that applied before the
4 challenged revocation decision.” Doc. 33. The Court dismissed Petitioner’s claim in Count
5 Four regarding her prolonged detention in light of Petitioner’s release from custody; and the
6 Court denied Petitioner’s request for a temporary restraining order and preliminary
7 injunction related to her claim in Count Five, which challenges procedures related to third-
8 country removal. Doc. 33.
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11 On September 12, 2025, Respondents filed a response to the Petition with respect to
12 Count Five. Doc. 39. They included a declaration from a deportation officer stating that
13 Petitioner had passed a fear screening and withholding-only proceeding had been reopened
14 to allow the Department of Homeland Security (DHS) to try and designate Mexico as an
15 alternative country of removal. Doc. 39-1 at ¶ 8–9. Petitioner has already voiced a fear of
16 persecution in Mexico, Doc. 39-1 at ¶ 6, and applied for asylum, withholding of removal,
17 and protection under the Convention Against Torture from that county in reopened
18 withholding-only proceedings before the immigration judge. On October 10, 2025,
19 Petitioner was taken back into ICE custody. Doc. 42. On October 13, 2025, Petitioner filed
20 a Motion for an Order to Show Cause as to why her current detention comports with this
21 Court’s August 5 order regarding her release. Doc. 43.
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25 1. Argument

26 a. Count Five is now moot because withholding-only proceedings have been 27 reopened.

28 In her Amended Petition, Petitioner argued that her “removal to any third country
without adequate notice and an opportunity to apply for relief under the Convention

1 Against Torture would violate her due process rights. The only remedy of this violation is
2 for this Court to maintain its order not to let Petitioner be summarily removed to any third
3 country unless and until she is provided constitutionally adequate procedures.” Doc 21 at
4 ¶ 105. In their Response, Respondents argue that this request for relief is barred by 8
5 U.S.C. § 1252(g), *see* Doc. 39 at pp. 4–5. They further argue that the Foreign Affairs
6 Reform and Restructuring Act of 1998 (FARRA) precludes Petitioner’s claims related to
7 additional CAT process and that Petitioner’s membership on in the *D.V.D.* class action is
8 duplicative of the request in Count Five and it therefore should not be considered. *Id.* at
9 pp. 6–9.

12 In *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL
13 1142968 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL
14 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025
15 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*
16 *Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,
17 2025), the district court granted class members certain procedural protections when the
18 government wishes to remove them to a country not designated in an immigration judge’s
19 order. Those include written notice of the proposed third country and an opportunity to
20 raise a fear-based claim to that country after reopening proceedings before an immigration
21 judge. *See D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 392–93 (D.
22 Mass.), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7,
23 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May
24 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep’t of Homeland Sec.*, 786 F.
25 Supp. 3d 223 (D. Mass. 2025). At the time of her request, Petitioner had not been given

1 either of those protections regarding Respondents' plan to remove her to Mexico. She
2 now has been given notice of DHS's intent to remove to her Mexico, voiced a fear claim,
3 passed a fear screening, and is in reopened withholding only proceedings. Doc. 39-1 ¶ 6–
4 9. Currently, because Respondents have voluntarily given the relief she requested,
5 Petitioner's claim under Count Five is moot. If the claim were not moot, Petitioner would
6 dispute Respondents' additional arguments that the claim is barred under § 1252(g),
7 precluded under FARRA, and should not be considered because of Petitioner's
8 membership in the *D.V.D.* class. Indeed, Respondents' argument regarding § 1252(g) is
9 foreclosed by the Ninth Circuit's decision in *Ibarra-Perez v. United States*, No. 24-631,
10 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025), which held that § 1252(g) does not bar
11 review of procedural protections that must be provided prior to a third country removal.
12 *See id.* at *7 (“The government's broad reading of § 1252(g) would lead to a result that is
13 not contemplated in the statute and that has been disavowed by the Supreme Court. The
14 government's reading of § 1252(g) would entirely insulate from judicial review any post-
15 hearing decision by ICE to remove noncitizens to third countries where they would be in
16 danger of persecution, torture, and even death.”).

17 Respondents have avowed to this Court that they only intend to remove Petitioner to
18 Mexico if an immigration judge orders her removal to that country. Doc. 39-1 at ¶ 9.
19 Should Respondents attempt to designate another country outside of removal proceedings
20 and/or without notice, however, Petitioner's claim would no longer be moot. Therefore,
21 Petitioner asks the Court to dismiss this Count without prejudice.
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