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

Juan Sanchez-Hernandez,

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

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

**RESPONSE TO SECOND AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS**

Respondents Christopher Howard, Warden, Eloy Detention Center; Chrstopher
McGregor, Field Office Director, U.S. Immigration and Customs Enforcement (“ICE”),
U.S. Department of Homeland Security (“DHS”); Todd Lyons, Acting Director of ICE;
Kristi Noem, Secretary of Homeland Security; and Pamela J. Bondi, Attorney General of
the United States (“Respondents”), by the through undersigned counsel, respond in
opposition to Petitioner’s Second Amended Petition for Writ of Habeas Corpus (Doc. 51).

1 **I. FACTUAL BACKGROUND.**

2 Petitioner Juan Sanchez-Hernandez is a native and citizen of Honduras.¹ Doc. 51 at
3 ¶ 1. Since 2007, she has been subject to a final order of removal. *Id.* at ¶ 22. Following
4 completion of a 17-year prison sentence for two counts of attempted sexual contact with a
5 minor under age 15 and one count of child molestation, Petitioner was detained by ICE in
6 August 2022. Doc. 19-1 at Ex. A, ¶¶ 10, 15. In 2022, Petitioner was granted withholding
7 of removal to Honduras under the Convention Against Torture.² *Id.* at ¶ 23. After efforts
8 to remove Petitioner were unsuccessful, Petitioner was released from ICE custody on an
9 order of supervision (“OSUP”) in January 2023. Doc. 19-1 at Ex. A, ¶ 21.

10 Petitioner was redetained by ICE in June 2025, and ICE attempted to remove
11 Petitioner to Mexico. Doc. 19-1 at Ex. A, ¶ 26. Petitioner claimed a fear of removal to
12 Mexico and was referred to an asylum pre-screening officer for a credible fear interview.
13 Doc. 19-1 at Ex. A, ¶ 27. Petitioner was found to have a credible fear and in September
14 2025, DHS moved to reopen Petitioner’s withholding-only proceedings to designate
15 Mexico as an alternate country or removal. Doc. 51 at ¶ 33. On November 18, 2025, an
16 Immigration Judge denied Petitioner’s application for withholding to Mexico under CAT.
17 Doc. 51 at ¶ 39. Petitioner filed a preemptive petition for review with the Ninth Circuit
18 Court of Appeals on November 7, 2025, which the Government has moved to dispose of
19 summarily. *See Sanchez Hernandez v. Bondi*, No. 25-7080 (9th Cir. Nov. 7, 2025). On
20 December 12, 2025, Petitioner moved for an extension of time to respond to the

21
22 _____
23 ¹ Petitioner identifies as transgender and, accordingly, will be referred to with female
24 pronouns in this response.

25 ² CAT protection or withholding under Section 1231(b)(3) does not alter *whether* an alien
26 may be removed; it affects only *where* an alien may be removed to. That is, a grant of CAT
27 protection “means only that, notwithstanding the order of removal, the noncitizen may not
28 be removed to the designated country of removal, at least until conditions change in that
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 Government's Motion for Summary Disposition. On December 5, 2025, Petitioner
2 appealed the Immigration Judge's decision to the Board of Immigration Appeals. Doc. 51
3 at ¶ 40.

4 In July 2025, filed a habeas petition (Doc. 1) and a motion for temporary restraining
5 order and preliminary injunction (Doc. 2). The motion was denied (Doc. 17). Petitioner
6 filed an amended habeas (Doc. 21) and a renewed motion for temporary restraining order
7 and preliminary injunction (Doc. 22). The Court consolidated the request for preliminary
8 injunction with a trial on the merits, granted judgment in Petitioner's favor on certain
9 counts, ordered Petitioner released from detention, dismissed one claim as moot in light of
10 Petitioner's release, and denied Petitioner's claim for a preliminary injunction related to
11 third country removal. *See* Doc. 33. Petitioner was released from ICE custody in August
12 2025. Doc. 43 at 3. Respondents answered the remaining count of the amended petition.
13 Doc. 39. Petitioner was redetained by ICE in October 2025 and moved for an order to show
14 cause why Respondents had not violated the Court's order directing Respondents to release
15 her from ICE custody when they redetained her. Doc. 43. The Court held a status
16 conference on October 21, 2025, at which Petitioner moved to dismiss the remaining count
17 of the amended petition, the Court granted in part and denied in part the motion for order
18 to show cause, and directed the parties to confer about the filing of a second amended
19 petition. *See* Doc. 48. Petitioner filed a second amended petition on December 9, 2025.
20 Doc. 51.

21 The Second Amended Petition alleges four causes of action: (1) Petitioner's current
22 detention violates 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001),
23 because her removal is not significantly likely to occur in the reasonably foreseeable future;
24 (2) her redetention in October 2025 violated the regulations regarding revocation of OSUPs
25 set forth at 8 C.F.R. § 241.4 and § 241.13, the *Accardi* doctrine, and her procedural due
26 process rights; (3) her redetention in October 2025 was arbitrary and capricious in violation
27 of the Administrative Procedure Act; and (4) her removal to any third country without
28 adequate notice and an opportunity to apply for relief under the Convention Against

1 Torture would violate her due process rights.

2 **II. PETITIONER'S HAS NOT DEMONSTRATED THAT HER REMOVAL TO**
3 **MEXICO IS NOT SIGNIFICANTLY LIKELY TO OCCUR.**

4 Respondents do not dispute that the post-removal-period is long expired and that
5 Petitioner's time in immigration detention has exceeded the presumptively reasonable six-
6 month limit. The question, however, is whether Petitioner has provided "good reason to
7 believe that there is no significant likelihood of removal in the reasonably foreseeable
8 future." *Zadvydas*, 533 U.S. at 701. If she has not—and she has not—then her claim fails.
9 Petitioner's removal to Mexico is significantly likely to occur as soon as Petitioner's appeal
10 of the Immigration Judge's order denying her withholding to Mexico is resolved, and
11 Petitioner has not provided any reason to believe that she will not be removed to Mexico
12 when her appeal is complete. Unlike the petitioners in *Zadvydas*, Petitioner's detention is
13 not "indefinite and potentially permanent." She is being detained pending the completion
14 of withholding-only proceedings that she voluntarily initiated. Those proceedings are
15 finite. She failed to obtain withholding-only relief before the Immigration Court, is
16 appealing that decision, and absent any diplomatic or logistical barriers, she will be
17 removed to Mexico when her appeal is complete.

18 **III. PETITIONER'S OSUP WAS PROPERLY REVOKED AND WAS NOT**
19 **REVOKED ARBITRARILY OR CAPRICIOUSLY.**

20 Petitioner alleges that her redetention by ICE on October 10, 2025, failed to comply
21 with 8 C.F.R. § 241.4(l) because it was not done by a person with regulatory authority to
22 revoke an OSUP. However, ICE revoked Petitioner's supervised release pursuant because
23 it "determined that there are changed circumstances in [her] case." Doc. 51-6, Notice of
24 Revocation of Release dated October 10, 2025. The regulation that authorizes such
25 revocation is 8 C.F.R. § 241.13(i), which grants only two procedural protections to an alien
26 whose order of supervision is revoked if, on account of changed circumstances, the Service
27 determines that there is a significant likelihood that the alien may be removed in the
28 reasonably foreseeable future: the alien is entitled to know "the reasons for revocation of
his or her release," and the alien is entitled to "an initial informal interview promptly after

1 his or her return to [ICE] custody” to respond to the reasons for revocation. 8 C.F.R.
2 § 241.13(i)(2), (3). 8 C.F.R. § 241.13(i) does not limit who within DHS has the authority
3 to revoke release. Rather, the regulation states that “the Service” may revoke release. 8
4 C.F.R. § 241.13(i). The regulation defines “Service” to “mean[] U.S Citizenship and
5 Immigration Services, U.S. Customs and Border Protection, and/or U.S. Immigration and
6 Customs Enforcement, as appropriate in the context in which the term appears.” 8 C.F.R.
7 § 1.2.

8 ICE provided Petitioner with the required notice at the time her OSUP was revoked,
9 *see* Doc. 51-6, and promptly provided her with the required informal interview, *see* Doc.
10 51-7. “Promptly” means “[q]uickly; without delay” or “[a]s soon as practicable.” Black’s
11 Law Dictionary (12th ed. 2024). Petitioner received her initial informal interview
12 promptly—either five or six days after her redetention. Petitioner does not cite any case
13 law finding that an interview conducted less than 1 week after redetention was not prompt
14 nor does she allege that she suffered actual prejudice by not receiving the informal
15 interview sooner. *See David v. Ayala*, 576 U.S. 257, 267 (2015) (holding that “[t]here must
16 be more than a ‘reasonable possibility’ that [an] error was harmful” to obtain habeas relief).

17 **IV. DUE PROCESS DID NOT REQUIRE THAT PETITIONER BE PROVIDED**
18 **WITH A PRE-DEPRIVATION HEARUNG.**

19 In Count II, Petitioner alleges that due process required that she receive “notice and
20 a meaningful opportunity to be heard prior to revoking her OSUP or detaining her,” Doc.
21 51 at ¶ 92, and prays for an order requiring DHS, “prior to any future detention” to
22 “provide[] a hearing before an independent adjudicator where DHS bears the burden of
23 justifying [her] re-detention, and that the adjudicator must further consider whether, in lieu
24 of detention, alternatives to detention exist to mitigate any risk that DHS might establish[.]”
25 Doc. 51 at Prayer for Relief, ¶ (k).

26 There is no statutory or regulatory requirement that entitles Petitioner to a “pre-
27 deprivation” hearing, much less one involving burden-shifting against the government. *See*
28 *generally* 8 U.S.C. § 1231(a)(6). For this Court to read one into the immigration custody

1 statute would be to create a process for which the current statutory and regulatory schemes
2 do not provide. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 580-82 (2022). In
3 *Morrisey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court reaffirmed that “due process
4 is flexible and calls for such procedural protections as the particular situation demands.”
5 *Id.* at 481. In addition, the “[c]onsideration of what procedures due process may require
6 under any given set of circumstances must begin with a determination of the precise nature
7 of the government function.” *Id.* With respect to the precise nature of the government
8 function, the Supreme Court has long held that “Congress regularly makes rules” regarding
9 immigration that “would be unacceptable if applied to citizens.” *Mathews v. Diaz*, 426 U.S.
10 67, 79-80 (1976). Under these circumstances, Petitioner does not have a cognizable liberty
11 interest in a pre-detention hearing, but even assuming she had one, it would be reduced
12 based on the immigration context.

13 The procedural process provided to Petitioner, if redetained at some theoretical
14 point in the future, is constitutionally adequate under the circumstances and no additional
15 process is required. “Procedural due process imposes constraints on governmental
16 decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning
17 of the [Fifth Amendment] Due Process Clause.” *Mathews v. Eldridge*, 424 U.S. 319, 332
18 (1976). “The fundamental requirement of [procedural] due process is the opportunity to be
19 heard ‘at a meaningful time and in a meaningful manner.’” *Id.* at 333 (quoting *Armstrong*
20 *v. Manzo*, 380 U.S. 545, 552 (1965)).

21 To determine whether procedural protections satisfy the Due Process Clause, courts
22 consider three factors: (1) “the private interest that will be affected by the official action”;
23 (2) “the risk of an erroneous deprivation of such interest through the procedures used, and
24 the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
25 Government’s interest, including the function involved and the fiscal and administrative
26 burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.
27 The first factor favors Respondents. The Supreme Court has long recognized that due
28 process as applied to aliens in matters related to immigration does not require the same

1 strictures as it might in other circumstances. In *Mathews v. Diaz*, the Court held that, when
2 exercising its “broad power over naturalization and immigration, Congress regularly makes
3 rules regarding aliens that would be unacceptable if applied to citizens.” *Diaz*, 426 U.S. at
4 79-80. In *Demore*, the Court likewise recognized that the liberty interests of aliens are
5 subject to limitations not applicable to citizens. 538 U.S. at 522 (citing *Zadvydas*, 533 U.S.
6 at 718 (Kennedy, J., dissenting)). Accordingly, while the Ninth Circuit has recognized the
7 individuals subject to immigration detention possess at least a limited liberty interest, it has
8 also recognized that aliens’ liberty interests are less than full. See *Diouf v. Napolitano*, 634
9 F.3d 1081, 1086-87 (9th Cir. 2011). Because Petitioner’s liberty interest is less than that at
10 issue in *Morrissey*, this factor does not indicate that Petitioner must be afforded a pre-
11 detention hearing.

12 The second *Mathews* factor also favors Respondents. Under the existing procedures,
13 aliens including Petitioner face little risk of erroneous deprivation. As explained above,
14 there is no risk of erroneous deprivation because Section 1231(a)(6) unquestionably
15 authorizes Petitioner’s detention to execute her final removal order to a third country, and
16 ICE is required to give Petitioner additional procedures under the Post Order Custody
17 Review Regulations in 8 C.F.R. § 241.13. These procedures are more than adequate to
18 provide Petitioner notice and opportunity to be heard during her detention.

19 The third *Mathews* factor—the value of additional safeguards relative to the fiscal
20 and administrative burdens that they would impose—weighs heavily in favor of
21 Respondents. Petitioner’s proposed safeguard—a pre-deprivation hearing—adds little
22 value to the system already in place in which she will receive periodic custody reviews to
23 ensure her removal remains reasonably foreseeable and in which the entire purpose of her
24 detention is to effectuate his removal. Petitioner’s proposed safeguard would disrupt the
25 removal process and there is no mechanism or authority for such a hearing found in the
26 statutes or regulations. Because the hearing Petitioner proposes would, by definition,
27 involve a non-detained individual, there would be hurdles to efficiently scheduling a
28 hearing. There is no administrative process in place for giving an alien with a final order

1 of removal a hearing resembling a bond hearing before an immigration judge. Petitioner's
2 proposed safeguard presents an unworkable solution to a situation already addressed by the
3 current procedures. *See* 8 C.F.R. §§ 241.4 and 241.13. Therefore, considering all of the
4 *Mathews* factors together, due process did not and does not require a pre-detention hearing.

5 **V. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S**
6 **REMOVAL.**

7 **1. 8 U.S.C. § 1252(g) bars review of Petitioner's challenge to the**
8 **execution of her removal order.**

9 Petitioner's "Alternative Count IV" seeking a stay of removal pending the
10 completion of extra-statutory procedures to remove her to a third country is barred by 8
11 U.S.C. § 1252(g). Congress spoke clearly that "no court" has jurisdiction over "any cause
12 or claim" arising from the execution of removal orders, "notwithstanding any other
13 provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or
14 the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping
15 provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to
16 the All Writs Act and Administrative Procedure Act) of claims arising from a decision or
17 action to "execute" a final order of removal. *See Reno v. American-Arab Anti-*
Discrimination Committee ("AADC"), 525 U.S. 471, 482 (1999).

18 Count IV seeks to require ICE to provide Petitioner with additional procedures prior
19 to her removal, *see* Doc. 51 at ¶ 99 and at Prayer for Relief at ¶ (p). But numerous courts
20 of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of
21 removal—even temporarily to assert other claims to relief—are barred by Section 1252(g).
22 *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred
23 petitioner's claim seeking a temporary stay of removal while he pursued a motion to reopen
24 his immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268,
25 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim
26 brought by an alien arising from the government's decision to execute a removal order. If
27 we held otherwise, any petitioner could frame his or her claim as an attack on the
28 government's *authority* to execute a removal order rather than its *execution* of a removal

1 order.”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner’s
 2 argument that jurisdiction remained because petitioner was challenging DHS’s “legal
 3 authority” as opposed to its “discretionary decisions”); *Tazu v. Att’y Gen. United States*,
 4 975 F.3d 292, 297 (3d Cir. 2020) (observing that “the discretion to decide *whether* to
 5 execute a removal order includes the discretion to decide *when* to do it” and that “[b]oth
 6 are covered by the statute”) (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869,
 7 874-77 (6th Cir. 2018) (vacating district court’s injunction staying removal, concluding
 8 that § 1252(g) stripped district court of jurisdiction over removal-based claims and
 9 remanding with instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938,
 10 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the
 11 execution of a final order of removal, and language barring “any cause or claim” made it
 12 “unnecessary for Congress to enumerate every possible cause or claim”).

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

15 Count IV seeks an order from the Court requiring Respondents to provide Petitioner
 16 with additional procedures beyond what CAT provides and run afoul of Section 2242(d)
 17 of the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”), which
 18 implements Article 3 of CAT and provides that:

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

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

26 Any judicial review of any claim arising under CAT is available exclusively on an
 27 individualized basis “as part of the review of a final order of removal” in the courts of
 28 appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same
 for “any other determination made with respect to the application of [CAT]”); *cf.*
Nasrallah, 590 U.S. at 580 (discussing FARRA). Under FARRA, “no court” has

1 jurisdiction to review DHS's implementation of CAT, yet that is precisely what Petitioner
2 seeks here by asking the Court to order ICE to comply with additional procedures so that
3 Petitioner may seek withholding of removal under CAT to a third country.

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

10 **VI. PETITIONER IS A *D.V.D.* CLASS MEMBER, SO HER DUPLICATIVE**
11 **CLAIM REGARDING THIRD COUNTRY REMOVAL IS FORECLOSED**
12 **BY THE PARALLEL CASE.**

13 Petitioner seeks to compel Respondents to provide Petitioner with additional, extra-
14 statutory procedures prior to removal from the United States to a third country,³ but
15 because that claim is already being adjudicated in the nationwide *D.V.D.* class action, this
16 Court should decline to consider it. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.); *see*
17 *also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district court "has broad
18 discretion to stay proceedings as an incident to its power to control its own docket). As part
19 of district courts' discretion to administer their dockets, courts have dismissed, without
20 prejudice, suits brought by individuals whose claims are duplicative of class claims in other

21 ³ In the INA, Congress has enacted provisions governing the determination of the country
22 to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. &*
23 *Customs Enft.*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United
24 States (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute
25 establishes sequences of countries where an alien shall be removed, subject to certain
26 disqualifying conditions (e.g., the receiving country will not accept the alien). For instance,
27 under Section 1231(b)(2), possible countries of removal can include a country designated
28 by the alien, the alien's country of citizenship, the alien's previous country of residence,
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 litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case,
2 discussing prior stay of Fifth Amendment challenge pending completion of pending class
3 action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *4-6
4 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL 319917 (C.D.
5 Cal. Jan. 18, 2023) (dismissing habeas case brought by federal prisoner related to COVID-
6 19 measures reasoning that petitioner’s claims were based, in part, on a duplicative class
7 action and were “not property before the court.”).

8 Multiple courts of appeals have upheld dismissals of cases where parallel class
9 actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d
10 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of
11 [the] complaint which duplicate the [class action’s] allegations and prayer for relief”);
12 *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits
13 for injunctive and declaratory relief cannot be brought where a class action with the same
14 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class
15 action has been certified, “[s]eparate individual suits may not be maintained for equitable
16 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot
17 relitigate issues raised in a class action after it has been resolved, a class member should
18 not be able to prosecute a separate equitable action once his or her class has been
19 certified”).

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

24 All individuals who have a final removal order issued in proceedings under
25 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
26 proceedings) whom DHS has deported or will deport on or after February 18,
27 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.

28 *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at

1 *11 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL
2 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025
3 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*
4 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,
5 2025). Petitioner makes no mention of her class membership in her Petition or Motion.

6 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D.*, 2025 WL
7 1142968, at *14, 18, and 25, membership in the class is mandatory with no opportunity to
8 opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that Rule
9 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not
10 even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v. Whoop,*
11 *Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025) (noting
12 that “23(b)(2) class members have no opportunity to opt out”).

13 The *D.V.D.* court entered a nationwide preliminary injunction requiring DHS to
14 comply with various procedures prior to removing a class member to a third country. The
15 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in
16 the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec. v. D.V.D.*,
17 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class,
18 Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants,
19 including any applicable injunctive relief. Accordingly, this Court should dismiss her
20 claims seeking additional procedures prior to her removal to a third country because they
21 are subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine
22 what Rule 23 was intended to ensure: consistency of treatment for similarly situated
23 individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL
24 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel
25 litigation in district courts all over the country which could ultimately threaten the
26 certification of the underlying class by creating differences among the class members.

27 Because Petitioner is bound as a member of the non-opt out class of individuals
28 governed by the *D.V.D.* nationwide preliminary injunction, this Court should dismiss

1 “Alternative Count IV” since another court is already considering Petitioner’s alleged
2 constitutional right to extra-statutory procedures before removal to a third country. Further,
3 Petitioner has already received the relief requested. She was notified of ICE’s intention to
4 remove her to a third country (Mexico), received a credible fear interview, was referred to
5 an Immigration Judge who denied her request for withholding, and is now appealing that
6 decision to the BIA and will not be removed until the appeal process is complete. Because
7 of that, it is unnecessary for the Court to issue the relief requested to Petitioner because, as
8 to removal to Mexico, her claim is moot, and as to removal to any other third country, her
9 claim is not ripe.

10 **VII. CONCLUSION.**

11 In light of the foregoing, the Court should deny the Second Amended Complaint.

12 Respectfully submitted this 18th day of December, 2025.

13 TIMOTHY COURCHINE
14 United States Attorney
15 District of Arizona

16 s/ Katherine R. Branch
17 KATHERINE R. BRANCH
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