**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF LOUISIANA**
**MONROE DIVISION**

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| **CARLOS ALBERTO RODELO ECHAVEZ (A[redacted]** | ) | **CIVIL ACTION NO: 3:25-cv-01282** |
| | ) | **SECTION: P** |
| | ) | |
| **VERSUS** | ) | **JUDGE EDWARDS** |
| | ) | |
| **TODD M. LYONS, *ET AL.*** | ) | **MAGISTRATE JUDGE MCCLUSKY** |
| | ) | |

**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR THE ISSUANCE OF AN ORDER TO SHOW CAUSE, AND TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

Respondents, Todd M. Lyons, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, Stanley Crockett, in his official capacity as Field Director of the ICE New Orleans Field Office and Warden, Jackson Parish Correctional Center, in their official capacity, respectfully file this opposition to for the issuance an Order to Show Cause, and Temporary Restraining Order or Preliminary Injunction.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT**
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**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR THE ISSUANCE OF AN ORDER TO SHOW CAUSE, AND TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

NOW INTO COURT come Respondents, Todd M. Lyons, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, Stanley Crockett, in his official capacity as Field Director of the ICE New Orleans Field Office and Warden, Jackson Parish Correctional Center, in their official capacity ("Respondents"), who, in accordance with the Court's Order dated September 8, 2025 (ECF No. 11), file this response to Petitioner's Motion for the Issuance of an Order to Show Cause, and Temporary Restraining Order or Preliminary Injunction (ECF No. 6).

As set forth herein, the Court should vacate the TRO currently in place (ECF No. 11) and deny Petitioner's additional request for preliminary injunctive relief. First, the parties have determined and advised the Court that Petitioner has in fact been provided notice of the third party to which the Government seeks to remove him. However, at the threshold, the Court lacks jurisdiction over ICE's discretionary decision on how to execute a removal order. Even if this were not the case, the Court should still vacate the TRO and deny any further request for injunctive relief because Petitioner cannot satisfy the requirements necessary for the extraordinary remedy of a TRO or preliminary injunction.

**FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner is a native and citizen of Columbia, who illegally entered the United States on or about May 6, 2023, without being admitted or paroled. (ECF 1); *see* Declaration of SDDO Johnson attached

as Exhibit A. On May 10, 2023, Department of Homeland Security (DHS) served Petitioner with Form I-862, Notice to Appear, charging him with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* Petitioner was enrolled into the Alternative to Detention Program and released from custody. *Id.* On February 4, 2025, the Immigration Court ordered the Petitioner removed to Columbia, but simultaneously ordered his removal withheld pursuant to a grant of protection under the Convention Against Torture (CAT). *Id.*, Attachment 1, Removal Order. On August 4, 2025, Petitioner was taken into ICE custody and was served with a Notice of Revocation of Release and Notice of Removal to Mexico. *Id.,* Attachment 2, Notice of Removal. The Notice of Removal to Mexico was written in English but was read aloud to Petitioner in Spanish. *Id.*

On September 2, 2025, Petitioner filed a petition for writ of habeas corpus on three counts: (1) that his immigration detention violates the Immigration and Nationality Act (INA), (2) that his continued detention violates substantive due process rights under *Zadvydas v. Davis, 533 U.S. 678 (2001)* and the Fifth Amendment, and (3) that his removal to a third country without notice and an opportunity to challenge that removal violates his procedural due process rights under the Fifth Amendment. (ECF 1). Petitioner seeks release from custody as a remedy for Counts 1 and 2, and he seeks a stay of his removal to any third country pending notice and an opportunity to challenge that removal as a remedy for Count 3. (ECF 1).

Petitioner also filed the instant motion, requesting the issuance of an Order to Show Cause and seeking a Temporary Restraining Order (TRO) or Preliminary Injunction ordering that he be released from physical custody. (ECF No. 6). Considering the allegation that Petitioner had not received any notice of the third country to which he would be removed, the Court granted a TRO that is to remain in effect until September 22, 2025. (ECF 11). This TRO did not order that the

Petitioner be released from custody as requested by the Petitioner. *Id.* Instead, the TRO enjoined Respondents from transferring Petitioner out of the Western District of Louisiana or removing Petitioner from the United States without notice and a meaningful opportunity to be heard regarding the third country to which the Government seeks his removal.[1] *Id.*

Since the entry of the TRO by the Court relating solely to the stay of Petitioner's removal from the United States, ICE has confirmed that, on August 4, 2025 (the day Petitioner was detained in ICE custody for the purpose of execution of his final order of removal), Petitioner was provided notice that the Government intended to remove him to Mexico. The TRO should be vacated on this basis alone. However, as set forth below, the Court also lacks jurisdiction over Petitioner's challenge to the execution of his removal order and, in any event, Petitioner cannot satisfy the requirements for the extraordinary remedy of a TRO or preliminary injunction.

## LEGAL STANDARD

### A. Legal Standard for Temporary Restraining Orders and Preliminary Injunctions

A TRO or preliminary injunction is an "extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A party seeking a TRO must show: (1) a "substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of the injunction will not disserve the public interest." *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 Fl.3d 570, 574 (5th Cir. 2012); *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (*quoting Byrum v. Landreth*, 566 F.3d 442, 445 (5th

[1] Respondents file this opposition solely to address the allegations raised in Count 3 of the habeas petition related to Petitioner's request for a stay of his removal and the propriety of the TRO that issued on those grounds. Respondents reserve all legal arguments and defenses related to Counts 1 and 2 of the Petition for Writ of Habeas Corpus regarding his continued detention (ECF No. 1), which will be addressed in a separate response to that Petition.

Cir. 2009)). However, in cases such as this, where the government is the nonmovant, the balance of hardships and lack of public disservice factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

"The same standard applies to both temporary restraining orders and to preliminary injunctions." *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009) (quoting *Chaplaincy*, 599 F. Supp. 2d 1, 3, n. 2 (D.D.C. 2009)). Though Petitioner glosses over the standard, it bears emphasis that the standard has teeth and is not easily met. The Fifth Circuit has "cautioned repeatedly" that a preliminary injunction is an "extraordinary remedy." *Tex. Med.*., 667 F.3d at 574. For this reason, the Fifth Circuit has made clear that relief should be treated "as the exception rather than the rule." *Miss. Power & Light v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1976). Such relief is "particularly disfavored" and should only issue when "the facts and law clearly favor the moving party." *Id.* Therefore, without such a showing as to all four elements, the preliminary relief cannot issue. *See, e.g. Ponce v. Sorcorro Indep. Sch. Dist.*, 508 F.3d 765, 772 (5th Cir. 2007).

**B. Legal Framework Governing Removal of Aliens to Third Countries**

The Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered 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. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implanting the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official.

If an alien is granted withholding-only relief during the removal proceedings involving claims under CAT, DHS may not remove the alien to the country designated in the removal order unless the

order of withholding is terminated. 8 C.F.R. §§ 208.22, 1208.22. But because withholding of removal is a form of country specific relief, nothing prevents DHS from removing the alien to a third country other than the country to which removal has been withheld or deferred, *Johnson v. Guzman Chavez*, 594 U.S. 523, 531–32, (2021)(citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428, n. 6, (1987)); §§ 208.16(f), 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2).

Although the INA authorizes removal of aliens who have received a final order of removal to a third country, it does not provide any additional specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decisions regarding the appropriate process entirely to the Executive Branch. *See generally* 8 U.S.C. § 1231. In March 2025, DHS issued guidance detailing its policy and processes in this context, *see* May 2025 Guidance, attached hereto as Exhibit "B", following President Trump's Executive Order directing DHS to take action against the many aliens who stay in this country for years despite being subject to final orders of deportation, Executive Order 14165, 90 Fed. Reg. 8467, attached hereto as Exhibit "C".

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. *See* Ex. B., Guidance at 1–2. A section applies for countries where the United States has not received such an assurance. In that case, the DHS policy provides that the alien is entitled to notice of the third county and an opportunity for a prompt screening of any asserted fear of being tortured there. *Id.* at 2.

## ARGUMENT

### A. The Court should dismiss this motion and deny the relief requested pending resolution of the already-certified class action in *D.V.D.*

Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who ICE plans to deport to a third country. Because Petitioner is bound as a member of the non-opt out class of the *D.V.D.* nationwide injunction, which the Supreme Court has now stayed, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Given that dismissal (at least of Count 3) is the appropriate remedy, Petitioner is not entitled to the preliminary relief sought in his motion.

"Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action." *Wynn v. Vilsack*, No. 3:21-CV-514, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) (internal quotations omitted). As the Eighth Circuit stated,

> After rendition of a final judgment, a class member is ordinarily bound by the result of a class action . . . . If a class member cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.

*Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). Thus, dismissal of this action in light of Petitioner's membership in the *D.V.D.* class is warranted. *See Horns v. Whalen*, 922 F.2d 835 (table), No. 90-6068, 1991 WL 78, at *2, 2 n.2 (4th Cir. Jan. 2, 1991) (holding that the district court was correct to avoid the risk of inconsistent adjudications); *see also McKinney v. Vilsack*, No. 2:21-00212-RWS, ECF No. 40 (E.D. Tex. Aug 30, 2021) (staying case pending resolution of the class action when according to defendants, plaintiff was a member of the two certified classes).

Here, the potential for conflicting decisions is real. Taking the instant Petition at face value, it appears that Petitioner is a member of the nationwide class certified by the United States District

Court for the District of Massachusetts on April 18, 2025. *D.V.D.*, 778 F. Supp. 3d at 379. That class is defined as:

> [a]ll 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.

*Id.* (emphasis added). In *D.V.D.*, Plaintiffs, on behalf of themselves and this certified class, seek to require DHS to provide additional procedures to class members before removing them to a third country (i.e. a country not previously designated in removal proceedings). The Court certified the class. *Id.* at 386 ("the Court finds that the named and unnamed Plaintiffs alike share an identical interest in challenging Defendants' alleged practice of removing individuals to third countries without notice and an opportunity to be heard, and, as such, satisfy the typicality requirement under Rule 23(a)(2)."); *see also Kincade v. Gen. Tire and Rubber Co.*, 635 F.2d 501, 506-07 (5th Cir. 1981) (discussing the lack of an opt out under Rule 23(b)(2)). Membership in the class is not waivable. Fed. R. Civ. P. 23(b)(2).

This Court should decline to exercise jurisdiction over Petitioner's Petition also as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim Petitioner is pursuing here. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."). Multiple courts of appeal have held that it is not an abuse of discretion for a district court to decline to exercise jurisdiction over an issue pending in another court, particularly if the other case is a class action. *Goff*, 672 F.2d at 704; *Brown v. Vermillion*, 593 F.2d 321, 322-23 (8th Cir. 1979); *see also Horns*, 1991 WL 78, at *2, n.2 (holding that the district court did not abuse its discretion in declining to decide issue that was subject of class action) (collecting similar district court cases); *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (holding that individual suits for injunctive and

declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (holding that duplicative suits should be dismissed once a class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (holding that class member should not be permitted to pursue an individual lawsuit seeking equitable relief within subject matter of class action); *Bryan v. Werner*, 516 F.2d 233, 239 (3d Cir. 1975) (finding that the district court did not err in refusing to consider an issue pending in a separate class action).

At its core, Petitioner's motion challenges how the Respondents should execute his third country removal. This Court should decline to wade into claims regarding third country removal that are already being actively litigated before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with the Supreme Court's stay. Moreover, class counsel in *D.V.D.* have already litigated several emergency motions related to the process given to several class members within the class action certified in the district of Massachusetts. Petitioner provides no conceivable reason why his case should proceed in this Court as a member of this non-opt out class. Thus, dismissal is warranted.

**B. The Court Lacks Jurisdiction to Interfere with Petitioner's Removal from the United States.**

This Court lacks jurisdiction under 8 U.S.C. § 1252(g) to consider Petitioner's challenge to the execution of his removal order and to enjoin his transfer out of the district and his removal from the United States. Section 1252(g), as amended by the REAL ID Act, bars claims arising from the three discrete actions identified in § 1252(g), including, as relevant here, the decision or action to "execute removal orders." *Id.* In enacting § 1252(g), Congress spoke clearly, emphatically, and repeatedly, providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, this jurisdiction-

stripping provision precludes review by the district courts of claims arising from a decision or action taken to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

In *AADC*, the Supreme Court considered the reach of § 1252(g), explaining that with respect to the "three discrete actions" identified in the text of § 1252(g)—commencement of proceedings, adjudication of cases, and execution of removal orders—§ 1252(g) strips district courts of jurisdiction. *AADC*, 525 U.S. at 482. Those actions are committed to the discretion of the Executive Branch, and § 1252(g) was designed to protect that discretion and to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *AADC*, 525 U.S. at 487. As such, if an alien challenges one of those discrete actions, § 1252(g) precludes jurisdiction over that challenge, whether the claim is constitutional or statutory. *See Elgharib v. Napolitano*, 600 F.3d 597, 602, 605 (6th Cir. 2010) (collecting cases); *Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (barring review of a Fourth Amendment false-arrest claim because the claim "directly challenge[d] [the] decision to commence expedited removal proceedings" ); *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 945 (5th Cir. 1999) (barring review of an alien's First Amendment retaliation claim based on the Attorney General's decision to put him into exclusion proceedings).

Indeed, Petitioner's "requested relief, a stay from removal, would necessarily impose a judicial constraint on immigration authorities' decision to execute the removal order [under Section 241 of the INA], contrary to the purpose of § 1252(g)." *Viana v. President of United States*, No. 18-cv-222, 2018 WL 1587474, at *2 (D.N.H. Apr. 2, 2018), *aff'd sub nom. Viana v. Trump*, No. 18-1276, 2018 WL 11450369 (1st Cir. June 18, 2018); *Idokogi v. Ashcroft, 66 Fed.App'x.* 526, *1 (5th Cir. 2003) ("The relief sought by Idokogi in the district court is connected 'directly and immediately' with the Attorney General's decision to commence removal proceedings against him. The district court therefore correctly determined that it lacked jurisdiction to stay the order of removal.") (internal citations

omitted); *Cardoso v. Reno*, 216 F.3d 512, 517 (5th Cir. 2000) ("Because this challenge is tantamount to a challenge to the execution of a removal order, section 1252(g) bars courts from exercising jurisdiction."); *Fabuluje v. Immigration and Naturalization Agency*, 244 F.3d 133, 133 (5th Cir. 2000) (unpublished); *Mapoy v. Carroll*, 185 F.3d 224 (4th Cir. 1999).

Even if § 1252(g) of the INA did not bar review, §§ 1252(a)(5) and 1252(b)(9) of the INA bar review in *this* Court. By law, "the sole and exclusive means for judicial review of an order of removal" is a "petition for review filed with an appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's claims by channeling "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien" to the courts of appeals in the circuit where the immigration judge completed the proceedings – the Fourth Circuit.[2] Again, the law is clear that "no court shall have jurisdiction, by habeas corpus" or other means. § 1252(b)(9). Section 1252(b)(9) is an "unmistakable 'zipper' clause" that "channels judicial review of *all* [claims arising from deportation proceedings]" to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. "Taken together, §[§] 1252(a)(5) and [(b)(9)] mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and- practices challenges . . . whenever they 'arise from' removal proceedings"). This statutory scheme is directly applicable to Petitioner's case because it restricts the availability of judicial review of the execution of removal orders by expressly precluding habeas corpus jurisdiction and channeling review of such orders to the courts

[2] Pursuant to the final order of removal, the proceedings concluded in the Hyattsville Immigration Court in Maryland, which falls under the United States Court of Appeals for the Fourth Circuit.

of appeal as "the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(a)(5). The statute provides that review of all questions "arising from any action taken or proceeding brought to remove an alien" shall be available, *if at all*, only through a petition for review in the appropriate court of appeals. *Id.* § 1252(b)(9).

*Mapoy* is instructive. There, the petitioner filed a habeas petition pursuant to 28 U.S.C. § 2241 and sought a preliminary injunction staying his removal while he attempted to reopen proceedings before the Board of Immigration Appeals ("BIA") and adjust his status based on his marriage to a United States citizen. *Mapoy*, 185 F.3d at 225–26. The Fourth Circuit reversed the lower court's grant of an injunction, holding that "Congress could have hardly been more clear and unequivocal that courts shall not have subject matter jurisdiction over claims arising from the actions of the Attorney General enumerated in § 1252(g) other than jurisdiction that is specifically provided by § 1252." *Id.* at 230. The Court further noted that § 1252(b) provided the only avenue for review, but even then, only allowed review from the BIA to the courts of appeal. *Id.*; *Nasrallah v. Barr,* 590 U.S. 573, 579 (2020) (noting how, with the passage of the REAL ID Act of 2005, Section 1252(b) was amended to funnel all "issues arising from a final order of removal" to the immigration courts with "direct review in the courts of appeals," and thereby "eliminating review in the district courts"). In sum, the statutory scheme here forecloses any habeas review under § 2241 in district courts which seeks to stay the execution of a removal order. *Id.*; *see also Fernandez v. Keisler*, 502 F.3d 337, 346 (4th Cir. 2007) (holding that the provision of the INA channeling judicial review through courts of appeal "expressly eliminate[s] district courts' habeas jurisdiction over removal orders"); *Loera Arellano v. Barr*, 785 Fed. Appx. 195 (4th Cir. 2019) (affirming dismissal of habeas action seeking stay of removal); *Futeryan-Cohen v. U.S. Immigration & Naturalization Svc.*, 34 Fed. Appx. 143, 145 (4th Cir. 2002) (reversing district court's grant of habeas relief to stay order of deportation and ordering dismissal).

Petitioner's removal order was entered in February of this year after the immigration judge considered his claims for withholding of removal to Colombia under CAT. *See* Ex. A, Attc. 1, p.3. During that proceeding, Petitioner was not granted withholding of removal to any other country. His failure to seek or be awarded a withholding of removal to any other country in his removal proceedings does not, however, give this Court the authority to consider the request in the context of a habeas corpus petition or motion for TRO or preliminary injunction. To the contrary, Congress explicitly stripped district courts of the ability to interfere with the execution of removal orders. Petitioner cannot come to this Court, at the last minute, for an extra-statutory remedy foreclosed by multiple jurisdictional bars to prohibit or prolong the execution of his removal, which is based on the determination that he came here illegally and is inadmissible under § 1182(a)(6)(A)(i). That is precisely the type of claim Section 1252, collectively, was aimed at preventing. *AADC*, 525 U.S. at 491 ("Whereas in criminal proceedings the consequence of delay is merely to postpone the criminal's receipt of his just deserts, in deportation proceedings the consequence is to permit and prolong a continuing violation of United States law. Postponing justifiable deportation … is often the principal object of resistance to a deportation proceeding, and the additional obstacle of selective-enforcement suits could leave the INS hard pressed to enforce routine status requirements.").

Here, Petitioner's primary argument in the instant motion is that he was being detained without any significant likelihood of removal in the reasonably foreseeable future because no third country for his removal had been identified. The parties have since determined that this is incorrect, and Petitioner was advised at the time of his detainment that he is to being processed for removal to Mexico. In any event, Petitioner challenges the execution of his final removal order under §1231, which is squarely within the discretion of the Attorney General, and this action is barred by the plain terms of § 1252(g). Accordingly, the current TRO must be vacated and the instant motion denied.

**C. Petitioner Cannot Satisfy the Requirements for the Extraordinary Remedy of a TRO or Preliminary Injunction**

Even if the Court did have jurisdiction over this action, which is denied, Petitioner is not entitled to a TRO or preliminary injunction because he cannot satisfy each of the four (4) requirements for this extraordinary remedy.

**1. Petitioner fails to establish a likelihood of success on the merits of his claim for violation of procedural due process.**

Petitioner cannot satisfy the first factor for injunctive relief because he cannot show a likelihood of success on the merits of his claim that the (alleged) failure to provide notice violates his Fifth Amendment right to procedural due process. First, DHS did *not* fail to provide notice as Petitioner initially alleged and has notified him of its intent to remove him to Mexico. Ex. A, Attc. 2. Moreover, the thrust of Petitioner's argument that removal without prior notice of the third country would deprive him of an opportunity to assert a fear claim and would therefore violate due process in not accurate. Again, Petitioner previously asserted his claims under CAT during his removal proceedings and did not identify or was not granted withholding for any other country to which he has a fear of going, let alone a cognizable basis for such a fear, other than Colombia. Petitioner admits in his motion that "a CAT grant does not preclude DHS from removing the noncitizen to a country in which he does not have a fear of future persecution or torture." (ECF Doc. 6-1, p. 3). And, having now filed a declaration alleging that he has a general and speculative fear of not only being deported to Mexico but also *anywhere* outside the United States, Petitioner underscores his inability to articulate a credible fear for third country removal because he claims that he only feels safe in the United States.[3] However, in accordance with the INA, he cannot stay in the United States, where he has been deemed inadmissible by an immigration court (an order for which he waived his appeal rights). Ex. A, Attc. 1,

[3] "If I am deported to Mexico, nothing but violence and danger awaits me. I am deeply afraid of leaving the United States because this is the only place where I feel safe." (ECF 14).

p. 6. This forecloses any argument that he is constitutionally entitled to litigate an additional alleged fear prior to removal.

Further, the Government's procedures for implementing CAT in cases involving removal to a third country are entirely consistent with due process. DHS' March Guidance provides that aliens may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." See Ex. B, Guidance. If the State Department finds the representations credible, the "alien may be removed without the need for any further procedures." *Id.* The process provided in the March Guidance satisfies all Constitutional requirements. The Supreme Court has held that when an Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf v. Geren*, 553 U.S. 674, 702–03 (2008); *see also Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"), cert. denied, 559 U.S. 1005 (2010). As now-Justice Kavanaugh explained in his concurrence in *Kiyemba*, the "Munaf decision applies here a fortiori: That case involved the transfer of American Citizens, whereas this case involves the transfer of alien detainees with no constitutional or statutory right to enter the United States." *Kiyemba*, 561 F.3d at 517–18 (Kavanaugh, J., concurring). These cases stand for the proposition that when the Executive decides an alien will not be tortured abroad, courts may not "second guess [that] assessment," at least unless Congress has specifically authorized judicial review of that decision. *Id.* at 517 (citations omitted); *Munaf*, 553 U.S. at 703 n.6; *see also AADC*, 525 U.S. at 491 (explaining that courts are ill-equipped to question the adequacy of Executive decisions regarding foreign policy and objectives).

This framework also requires that the Court reject any argument that Petitioner is entitled to an individualized determination under the CAT regulations. That is not the law. The regulations provide that assurances that an alien would not be tortured if removed to a "specific country" are

sufficient - nothing in the regulations requires an alien-by-alien determination as to what would be likely to happen in that country. See 8 C.F.R. § 1208.18(c)(1). Therefore, the Secretary can conclude that "an alien" would not be tortured upon removal because no alien would be treated in that way given the assurance provided by that country. *Id.* If removal is to a third country not covered by adequate assurances, the March Guidance makes clear that DHS will first inform the alien of removal to that country and then give him an opportunity establish that he fears removal there. Ex. B. If the alien does so, immigration officials will screen the alien to determine whether he "would more likely than not" be tortured in that country. *Id.* If not, the alien will be removed. If so, the alien will be placed in further administrative proceedings, or the government may choose another country for removal and the same protections will be implicated.

**2. Petitioner fails to demonstrate irreparable harm.**

To establish irreparable harm, a party must show that the harm is certain and so imminent as to necessitate immediate equitable relief. "Speculative harm" or the mere "possibility of irreparable harm" is not enough. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001) ("Speculative injury is not sufficient, there must be more than an unfounded fear on the part of the applicant … A presently existing actual threat must be shown."; *See also Adams v. Cantwell*, Case no. 6:20-cv-11, 2022 WL 453544, at *2 (E.D. Tex. Jan. 10, 2022), *report and recommendation adopted*, 6:20-cv-11, 2022 WL 446756 (Feb. 12, 2022) (Kernodle, J.) ("To the extent that Plaintiff is expressing fear of future harm, the speculative nature of such claim does not satisfy the heightened burden necessary for the extraordinary relief of a preliminary injunction.").

Petitioner has not demonstrated to this Court that there is a substantial threat of irreparable harm if an injunction is not issued. This Court stated in its Minutes and Order of September 8 that the irreparable harm in this case is a violation of Petitioner's due process rights by failing to provide notice of a third country prior to removal. However, Respondents submit herewith evidence that

notice of the third country (Mexico) was provided to Petitioner on August 4, 2025. The Affidavit of Eva Chevez signed on September 9, 2025 and filed into the record by Petitioner on September 10, 2025, which includes Petitioner's statement, does not dispute that documents were provided to Petitioner following his detention, and that it was "mentioned that [he] might be sent to a third country, possibly Mexico." (ECF No. 14). Further, Petitioner has not established the type of irreparable harm absent preliminary relief that warrants the extraordinary remedy he seeks from this Court. Again, the Secretary of State has authority to obtain "assurances" from a foreign country that an alien will not be tortured if removed there. These assurances are dispositive with respect to CAT protection. *See* 8 C.F.R. 208.18(c). Petitioner fails to identify any irreparable harm from the government's ability to obtain these assurances categorically versus one-by-one. And, even if the government has not obtained sufficient assurances, Petitioner is protected. The March Guidance provides them notice (which Petitioner has been provided) and a reasonable opportunity for the Petitioner to raise a fear of removal. *See* Ex. B. Petitioner fails to show why the procedures established under the March Guidance are insufficient to preclude irreparable harm. Simply put, Petitioner has failed to identify any irreparable injury, and any theoretical harm is so far removed—so speculative—that it cannot possibly satisfy the irreparable harm requirement for preliminary injunctive relief.

**3. The third and fourth factors similarly favor denial of the Application.**

Because Petitioner seeks to enjoin the action of a government agency, the third factor in assessing whether injunctive relief is appropriate, the balance of equities, and the fourth factor, the public interest, merge. *Nken v. Holder,* 556 U.S. 418, 435 (2009). In this case, both factors weigh in favor of denying injunctive relief. Any time a government's policy is blocked by court order, it suffers irreparable harm. *Maryland v. King,* 567 U.S. 1301, 1303 (2012) ("[A]ny time a State is enjoined from effectuating statute enacted by representatives of its people, it suffers a form of irreparable injury.") (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. V. Orrin W. Foz Co.*, 434 U.S. 1245, 1351

(Rehnquist, Circuit Justice, in chamber)). That harm is more poignant in the immigration context where the Constitution assigns preeminent power to the political branches. *See Galvan v. Press*, 347 U.S. 522, 531 (1954). What is more, Petitioner has not demonstrated that his interest will be served by the extraordinary remedy of injunctive relief. As explained *supra*, the March Guidance affords Petitioner sufficient due process such that he cannot establish irreparable harm. Therefore, on balance, the third and fourth factors weigh against providing preliminary injunctive relief. Again, although this Court noted in its Minutes and Order that the balance of harms and the public interest weigh in Petitioner's favor as the TRO would prevent the Government from removing the Petitioner without proper notice, Respondents have demonstrated to the Court that notice was given to Petitioner at the time he was detained identifying a third country for removal. Therefore, these factors no longer weigh in favor of a TRO or preliminary injunction.

**CONCLUSION**

For the foregoing reasons., the Court should vacate the pending TRO and deny Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction and dismiss Count 3 of the habeas petition on the grounds that Petitioner is a class member of *D.V.D.*, this Court lacks jurisdiction to review the execution of a removal order or issue a stay of removal, and the Petitioner has failed to meet the requirements for the issuance of any injunctive relief for the stay of his removal.

Respectfully submitted,
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