



## BACKGROUND

### I. Petitioner's Allegations

Petitioner alleges he is a citizen of Sudan. Doc. 1, ¶ 12. Without alleging that he had legal authorization to do so, Petitioner further alleges that he entered the United States on or about July 10, 2024. *Id.* ¶ 23. Petitioner alleges he was detained by ICE “shortly thereafter” and that a Notice to Appear dated August 27, 2024, and a Warrant for Arrest of Alien, was served on September 6, 2024. *Id.* Petitioner further alleges that on November 12, 2024, he submitted a form I-589, Application for Asylum and for Withholding of Removal asserting that he faced fear of persecution if he returned to Sudan. *Id.* ¶ 20.

Petitioner also alleges that on January 28, 2025, Petitioner was granted a withholding of removal under 8 U.S.C. § 1231(b)(3), preventing removal to his home country of Sudan. *Id.* ¶ 24. Petitioner further alleges that his removal order became final on February 27, 2025. *Id.* ¶ 25. Although Petitioner also seeks relief from detention under 8 U.S.C. § 1231(a) as interpreted by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), Petitioner’s requested injunctive relief relates to his fear that he will be removed to a third country without unspecified “adequate notice.” Doc. 4, p. 10 (“Mr. Manago seeks only very limited relief here: adequate notice of any intended third-country removal.”).

### II. Legal Background

As a general matter, DHS “may not remove an alien to a country if the Attorney General decides that the alien’s life or freedom would be threatened in that country because of [his or her] race, religion, nationality, membership in a particular social group, or political opinion,” 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16(a)-(b), 1208.16(a)-(b), or if it is more likely than not that the alien would be tortured, 8 C.F.R. §§ 208.16(c), 208.17, 1208.16(c), 1208.17.

Additionally, aliens ordered removed “may designate one country to which [he or she] wants to be removed,” and DHS “shall remove the alien to [that] country[.]” 8 U.S.C. § 1231(b)(2)(A). If, however, the alien cannot be removed to a country of designation or the country of nationality or citizenship, then the government may consider other options, including “[t]he country from which the alien was admitted to the United States,” “[t]he country in which the alien was born,” or “[t]he country in which the alien [last] resided[.]” *Id.* §§ 1231(b)(2)(E)(i), (iii)-(iv). Where removal to any of the countries listed in subparagraph (E) is “impracticable, inadvisable, or impossible,” then the alien may be removed to any “country whose government will accept the alien into that country.” *Id.* § 1231(b)(2)(E)(vii); *see Jama v. Immigr. & Customs Enft.*, 543 U.S. 335, 341 (2005).

### ARGUMENT

The Court should deny Petitioner’s requested temporary restraining order because (1) the Court lacks jurisdiction over Petitioner’s CAT claim and (2) the Petitioner is a member of a certified non-opt out class, whose claims are currently being litigated at the First Circuit Court of Appeals.

#### **I. The Immigration and Nationality Act and the Foreign Affairs Reform and Restructuring Act bar the Court’s jurisdiction over Petitioner’s CAT claim.**

The Immigration and Nationality Act (INA) provides that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of any cause or claim under [CAT].” 8 U.S.C. § 1252(a)(4). Likewise, the Foreign Affairs Reform and Restructuring Act (FARRA) confirms that “no court shall have jurisdiction to review . . . any . . . determination made with respect to the application of [CAT] . . . except as part of the review of a final order of removal.” FARRA § 2242(d), 112 Stat. 2681-822; *see* 8 C.F.R. § 208.18(e). FARRA also bars judicial review of the “regulations adopted to implement [CAT],”

and assigns to the Executive alone the duty to design procedures to “implement the obligations of the United States” under that treaty. FARRA § 2242(d), 112 Stat. 2681-822.

Petitioner’s requested temporary restraining order—which challenges DHS’s existing procedures for certain CAT claims—both concerns the “application” of CAT and is a “cause or claim under [CAT].” The appropriate court of appeals is therefore Petitioner’s only avenue for relief relating to his CAT claim and this Court lacks jurisdiction over it. 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822; 8 C.F.R. § 208.18(e).

In addition to the jurisdictional bar relating to CAT claims, Petitioner’s requested relief would violate INA provisions that prohibit district courts from exercising jurisdiction over suits challenging actions taken to execute removal orders. Congress has explicitly and unambiguously stripped district courts of jurisdiction over “any cause or claim by or on behalf of any alien arising from the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g). To the extent claims arising from these distinct actions are reviewable at all, they are only reviewable along with any other “questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien”—in a petition for review of a “final order” of removal in the appropriate court of appeals. 8 U.S.C. § 1252(b)(9). And that petition, again, is the “sole and exclusive means for judicial review” of such claims. 8 U.S.C. § 1252(a)(5).

Together, these provisions strictly limit judicial review over certain “stages in the deportation process.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-484 (1999) (*AADC*). One such stage is the execution of a removal order. *Id.* If an alien wishes to challenge that discrete act in court, his sole and exclusive means of doing so is a petition for review; if that means is unavailable, then nothing in the INA “provides for jurisdiction” for the federal courts to intervene. *Id.* at 487; *Mapoy v. Carroll*, 185 F.3d 224, 229-30 (4th Cir. 1999) (holding

that Section 1252(g) has “a singular exception to the general rule in § 1252(g) that jurisdiction is stripped from the enumerated claims” and that is for claims “specifically provided by § 1252.”).

Once more, that principle precludes this Court from exercising jurisdiction over Petitioner’s requested relief. His request for a temporary restraining order arises entirely from actions taken to “execute removal orders,” 8 U.S.C. § 1252(g)—namely, to remove him to a third country—and thus “falls squarely within” the INA’s jurisdictional bar. *AADC*, 525 U.S. at 487. The district court therefore lacks authority to enjoin Respondents from removing Petitioner to a third country without additional process—i.e., from executing his removal order in a particular way.<sup>1</sup> The Court should deny Petitioner’s request for a temporary restraining order.

## **II. Petitioner seeks injunctive relief rejected by the Supreme Court in *D.V.D. v. U.S. Dep’t of Homeland Sec.***

Petitioner’s requested temporary restraining order should also be denied because the relief Petitioner seeks is the same as the relief requested in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, in the District of Massachusetts, a putative class action suit challenging third country removals. On March 28, 2025, the district court entered a Temporary Restraining Order enjoining the DHS and others from “[r]emoving any individual subject to a final order of removal from the United States to a third country, *i.e.*, a country other than the country designated for removal in immigration proceedings” unless certain conditions were met. *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 942948 (D. Mass. Mar. 28, 2025).

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<sup>1</sup> As a practical matter, CAT protection is an extraordinary remedy reserved for the “extreme” scenario when an alien faces a specific threat of severe pain or suffering intentionally inflicted by the hand or with the consent or acquiescence of a government official in the receiving country. 8 C.F.R. § 208.18(a)(1), (a)(2). It does not extend to whenever an alien is removed to a country with a high crime rate, civil unrest, or other risk of private violence. *See, e.g., Del Carmen Amaya-De Sicaran v. Barr*, 979 F.3d 210, 218-19 (4th Cir. 2020) (torture is a “high bar”).

On April 18, 2025, the district court issued an order granting the Plaintiff's motion for class certification and motion for preliminary injunction. *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025). That Order certified a non-opt out class and established certain procedures that DHS must follow before removing an alien with a final order of removal to a third country, which were, until recently, in effect nationwide. Specifically, the class is defined as:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only proceedings) who 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.*

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts's preliminary injunction pending appeal in the United States Court of Appeals for the First Circuit. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). That same day, the District Court of Massachusetts ordered that its prior order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Defendants moved to clarify the Supreme Court's Order and, on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

Here, the Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. Petitioner requests judicial oversight of the implementation of his third country removal. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently 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 not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts.

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

Allowing Petitioner to seek additional process would be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* Thus, this Court should not require Respondents to provide the degree of process requested by Petitioner before removing Petitioner to a third country.

### **III. The balance of factors does not support Petitioner's requested relief.**

"A preliminary injunction is 'an extraordinary remedy never awarded as of right;' it is 'the exception rather than the rule.'" *Harmon v. City of Norman*, 981 F.3d 1141, 1146 (10th Cir. 2020)

(internal citations omitted). In other words, “[b]ecause preliminary injunctions and TRO’s are drastic remedies – the exception rather than the rule – plaintiff must show that they are clearly and unequivocally entitled to relief.” *Love v. Schnurr*, No. 22-3276-JWL-JPO, 2022 WL 17039182, \*1 (D. Kan. Nov. 17, 2022) (citation modified). The party seeking the preliminary injunction bears the burden of proof and must show: “(1) they are substantially likely to succeed on the merits of their claims, (2) they will suffer irreparable harm if the injunction is denied, (3) their threatened injury without the injunction outweighs any harm to the party opposing the injunction, and (4) the injunction, if issued, is not adverse to the public interest.” *Harmon*, 981 F.3d at 1146 (citation omitted).<sup>2</sup> When the government is a party, however, the third and fourth factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

**A. Petitioner is not likely to succeed on the merits of his CAT claim.<sup>3</sup>**

Setting aside the jurisdictional defects, Petitioner is not likely to succeed on the underlying merits. On March 30, 2025, DHS issued guidance clarifying its “policy regarding the removal of aliens with final orders of removal pursuant to sections 240, 241(a)(5), or 238(b) of the [INA] to countries other than those designated for removal in those removal orders.”<sup>4</sup> Exhibit 1, Guidance Regarding Third Country Removals (the March Guidance). The March Guidance distinguishes between removals to countries that have provided credible assurances that any aliens removed there will not be tortured, and removals to those countries that have not done so. *Id.*

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<sup>2</sup> The same standard applies to requests for TROs. *Carpenters Pension Tr. Fund of Kan. City v. Indus. Maint. of Topeka, Inc.*, No. 21-2208-DDC-GEB, 2023 WL 1394884, at \*1 n.1 (D. Kan. Jan. 31, 2023).

<sup>3</sup> Respondents do not address the merits of Petitioner’s *Zadvydas* claim as Petitioner’s relief requested in the motion for a temporary restraining order relates only to his request that he be given certain notice before removal.

<sup>4</sup> Section 240 corresponds with 8 U.S.C. § 1229a (“Removal proceedings”); Section 241(a)(5) corresponds with 8 U.S.C. § 1231(a)(5) (“Reinstatement of removal orders against aliens illegally reentering”); and Section 238(b) corresponds with 8 U.S.C. § 1228(b) (“Removal of aliens who are not permanent residents”).

For countries that have provided such an assurance, “the alien may be removed without the need for further procedures.” *Id.* For countries that have not, DHS must first inform the alien of removal to the country, and give him an opportunity to “affirmatively express a fear of persecution or torture” there. *Id.* at 121. If he does so, an immigration officer will conduct a prompt screening to determine whether he “would more likely than not be” tortured in the country of removal. *Id.* If the alien fails to satisfy this standard, he “will be removed.” *Id.* If he does satisfy it, he will be put into additional administrative procedures, consistent with how CAT claims are typically handled. *See id.* “Alternatively, ICE may choose to designate another country for removal,” and start the process afresh. *Id.*

The Supreme Court has already held that when the 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). Indeed, “[u]nder *Munaf* . . . the district court may not question the Government’s determination that a potential recipient country is not likely to torture a detainee.” *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009), *cert. denied*, 559 U.S. 1005 (2010). 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 (citation omitted); *see Munaf*, 553 U.S. at 703 n.6.

Considering this, and the Supreme Court’s recent stay of the district court’s injunction in *D.V.D.*, Petitioner is not likely to succeed on the merits of his claim that he is entitled to additional process beyond that already outlined in the March Guidance.

**B. The balance of equities favors Respondents.**

The Supreme Court impliedly concluded, in granting a stay of the preliminary injunction in *D.V.D.*, that the government would be irreparably harmed by the preliminary injunction and—

to the extent it considered this a close case—that the balance of equities tips in favor of the government. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2159 (June 23, 2025) (Sotomayor, J., dissenting) (criticizing majority's conclusions regarding the non-merits factors). Here, Petitioner has not established irreparable harm that warrants extraordinary relief beyond that already alleged in *D.V.D.* As noted above, the Secretary of State has the authority to obtain “assurances” from a foreign country that an alien will not be tortured if removed there, and those assurances are already dispositive with regard to CAT protection. 8 C.F.R. § 208.18(c). Likewise, as for aliens set to be removed to a country who has not provided assurances, the March Guidance provides them notice and an opportunity to raise a fear of removal. Exhibit 1.

By contrast, as underscored by the Supreme Court's recent trio of stays in similar cases involving immigration policy, the government suffers irreparable harm when the Executive Branch is barred from implementing its immigration policies. *See Noem v. Nat'l TPS Alli.*, No. 24A1059, 2025 WL 1427560 (U.S. May 19, 2025); *Noem v. Doe*, 145 S. Ct. 1524 (2025); *D.V.D.*, 2025 WL 1732103. The government suffers an irreparable sovereign harm whenever its policy is blocked by a court order. *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *cf. Trump v. CASA, Inc.*, 2025 WL 1773631 at \* 24 (holding that the Executive Branch is irreparably harmed by an injunction that exceeds a district court's power and improperly intrudes on executive prerogatives).

That harm is even more acute in the immigration context, where the Constitution assigns preeminent power to the political branches. *See Galvan v. Press*, 347 U.S. 522, 531 (1954). Those harms are particularly pronounced in this case. The Constitution envisions that “the Government's political departments [will be] largely immune from judicial control” in the immigration sphere.

*Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citation omitted). As such, the balance of equities weighs against Petitioner’s requested injunctive relief.

**C. If the Court grants the request for a temporary restraining order, the Court should require a bond.**

Federal Rule of Civil Procedure 65(c) of the Federal Rules of Civil Procedure provides that a court may issue a temporary restraining order (or preliminary injunction) “only if the movant gives security” for “costs and damages sustained” by the non-moving party in the event the non-moving party is later found to “have been wrongfully enjoined.” Fed. R. Civ. P. 65(c). A trial court has “wide discretion” under Rule 65(c) in determining whether to require security. *See Cont. Oil Co. v. Frontier Refin. Co.*, 338 F.2d 780, 782 (10th Cir. 1964) (per curiam). On March 11, 2025, the President issued a memo requiring federal agencies to seek security when confronted with suits seeking emergency preliminary injunctive relief.<sup>5</sup> Pursuant to that memo, to the extent that the Court grants preliminary injunctive relief in this case, Respondents respectfully request that the Court require Petitioner to provide adequate security.

**CONCLUSION**

The Court should deny Petitioner’s request for a temporary restraining order because the Court lacks jurisdiction over Petitioner’s CAT claim, Petitioner is part of a non-opt class, whose claims are currently being litigated at the First Circuit Court of Appeals, Petitioner is not likely to succeed on the merits, and the balance of equities weigh in favor of Respondents.

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<sup>5</sup> *See* White House Memo, Ensuring the Enforcement of Federal Rule of Civil Procedure 65(c), <https://www.whitehouse.gov/presidential-actions/2025/03/ensuring-the-enforcement-of-federal-rule-of-civil-procedure-65c/> (last visited Sept. 4, 2025).

Respectfully submitted,

RYAN A. KRIEGSHAUSER  
United States Attorney  
District of Kansas

/s/ Audrey D. Koehler  
Audrey D. Koehler, KS #28271  
Assistant United States Attorney  
United States Attorney's Office  
District of Kansas  
301 N. Main, Suite 1200  
Wichita, Kansas 67226  
PH: (316) 269-6481  
FX: (316) 269-6484  
Email: [audrey.koehler@usdoj.gov](mailto:audrey.koehler@usdoj.gov)  
*Attorney for the United States*

**CERTIFICATE OF SERVICE**

I certify that on September 4, 2025, the foregoing was electronically filed with the Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Audrey D. Koehler  
Audrey D. Koehler  
Assistant United States Attorney