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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

11 Kauser Mohamoud Yusuf,

12
13 Petitioner,

14 v.

15 Kristi Noem, et al.,

16 Respondents.

No. 2:25-cv-03409-PHX-JJT (ASB)

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

17 Respondents Kristi Noem, Secretary of Department of Homeland Security (“DHS”);
18 Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement (“ICE”);
19 John E. Cantu, ICE Phoenix Field Office Director; and Fred Figueroa, Warden, Eloy
20 Detention Center (“Respondents”), by the through undersigned counsel, respond in
21 opposition to Petitioner’s Petition for Writ of Habeas Corpus (Doc. 1). The Court previously
22 granted in part and denied in part Petitioner’s Emergency Motion for Temporary Restraining
23 Order and Preliminary Injunction (Doc. 7), and preliminarily enjoined Respondents from
24 continuing to detain Petitioner and ordered her immediate release from immigration
25 detention. Doc. 18.

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1 **I. FACTUAL BACKGROUND**

2 Petitioner is a citizen of Somalia and resident of Dakota County, Minnesota. Doc. 1
3 at ¶ 6. She entered the United States in 2005 as a refugee and later adjusted her status to
4 lawful permanent resident. Doc. 1 at ¶¶ 21, 22. In December 2014, Petitioner was convicted
5 of aiding and abetting the sex trafficking of an individual under 18 years of age under Minn.
6 Stat. § 609.322.1(a)(4) and was later sentenced to 90 months in prison. Doc. 1 at ¶¶ 23, 24.
7 In 2015, ICE initiated removal proceedings against Petitioner. Doc. 1 at ¶ 25. In November
8 2018, an immigration judge denied Petitioner's applications for asylum and withholding of
9 removal and ordered her removed to Somalia but granted her deferral of removal to Somalia
10 under the Convention Against Torture ("CAT").¹ Doc. 1 at ¶ 27. Petitioner was released
11 from prison into ICE custody in December 2019. Doc. 1 at ¶ 28. In March 2020, Petitioner
12 was released from ICE custody. Doc. 1 at ¶ 29. Petitioner was arrested by Border Patrol on
13 August 28, 2025, during a checkpoint inspection. Doc. 1 at ¶¶ 38, 42. She was subsequently
14 transferred to ICE custody on or about September 3, 2025. Doc. 1 at ¶ 44.

15 Petitioner filed this habeas action on September 17, 2025. Doc. 1. The habeas petition
16 asserts three causes of action: (1) detention as statutory violation of 8 U.S.C. § 1231; (2)
17 detention as regulatory violation of 8 C.F.R. § 241.13; and (3) detention as substantive due
18 process violation of the Fifth Amendment. Doc. 1. Petitioner also filed an Emergency
19 Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 7) seeking her
20 immediate release from immigration detention. Respondents did not oppose Petitioner's
21 release, but Petitioner's proposed order for preliminary injunction (Doc. 16) also sought to
22 enjoin Respondents from removing her to a third country without providing additional,
23 extra-statutory procedures. That relief is not sought in the habeas petition, nor was it

24 ¹ CAT protection or withholding under Section 1231(b)(3) does not alter *whether* an alien
25 may be removed; it affects only *where* an alien may be removed to. That is, a grant of CAT
26 protection "means only that, notwithstanding the order of removal, the noncitizen may not
27 be removed to the designated country of removal, at least until conditions change in that
28 country." *Nasrallah v. Barr*, 590 U.S. 573, 582 (2020). The United States remains free to
remove that alien "at any time to another country where he or she is not likely to be tortured."
Id. (citation omitted); see *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.6 (1987). Thus,
the alien remains removable as an alien with a final order of removal.

1 addressed in the Emergency Motion for Temporary Restraining Order and Preliminary
2 Injunction. Petitioner was released from ICE custody on or about October 2, 2025, and
3 remains out of custody. ICE is not currently seeking to remove Petitioner to a third country.

4 **II. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S**
5 **REMOVAL.**

6 Despite the fact that Petitioner has not asserted a claim related to third country
7 removal in her habeas petition, and despite the fact that ICE is not currently seeking to
8 remove Petitioner to a third country, in an abundance of caution, and so as not to be
9 considered to have conceded a right to relief on this issue, Respondents address Petitioner's
10 request for an order enjoining her removal to a third country.

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

13 To the extent Petitioner is seeking a stay of removal pending the completion of extra-
14 statutory procedures despite not asserting that as a cause of action in her habeas petition,
15 such a stay is barred by 8 U.S.C. § 1252(g). Congress spoke clearly that "no court" has
16 jurisdiction over "any cause or claim" arising from the execution of removal orders,
17 "notwithstanding any other provision of law," whether "statutory or nonstatutory,"
18 including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g). Accordingly, by its
19 terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241
20 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims
21 arising from a decision or action to "execute" a final order of removal. *See Reno v.*
22 *American-Arab Anti-Discrimination Committee ("AADC")*, 525 U.S. 471, 482 (1999).

23 The proposed order for preliminary injunction sought to require ICE to provide
24 Petitioner with additional procedures prior to her removal. *See* Doc. 16 at 2 ("Respondents
25 are hereby ENJOINED from: . . . (3) removing Petitioner to any allegedly safe third country
26 without first providing Petitioner with a full merits hearing before an immigration judge
27 wherein he [sic] may seek asylum, withholding of removal, and/or deferral of removal under
28 the Convention Against Torture with all normal appeal rights."). But numerous courts of
appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of

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

21 **B. The Foreign Affairs Reform and Restructuring Act of 1998 precludes
22 Petitioner’s claims related to additional process.**

23 Petitioner’s request for an order from the Court requiring Respondents to provide her
24 with the right to fully reopen and contest her removal, and to apply to relief from removal
25 to which she is not entitled, including additional procedures beyond what CAT provides,
26 runs afoul of Section 2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998
27 (“FARRA”), which implements Article 3 of CAT and provides that:

28 Notwithstanding any other provision of law, and except as provided [by
regulation], *no court shall have jurisdiction to review the regulations
adopted to implement this section, and nothing in this section shall be*

1 *construed as providing any court jurisdiction to consider or review claims*
 2 *raised under the Convention or this section[.]*

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

5 Any judicial review of any claim arising under CAT is available exclusively on an
 6 individualized basis “as part of the review of a final order of removal” in the courts of
 7 appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same
 8 for “any other determination made with respect to the application of [CAT]”); *cf. Nasrallah*,
 9 590 U.S. at 580 (discussing FARRA). Under FARRA, “no court” has jurisdiction to review
 10 DHS’s implementation of CAT, yet that is precisely what Petitioner seeks here by asking
 11 the Court to order ICE to comply with additional procedures so that Petitioner may seek
 12 asylum (which is not available in the context of a third country removal, *see* 8 U.S.C. § 1158;
 13 8 C.F.R. §§ 208, 1208, *et seq.*), withholding of removal under 8 U.S.C. § 1231(b)(3), and
 14 withholding under CAT.

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

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

24 Petitioner seeks to compel Respondents to provide Petitioner with additional, extra-
 25 statutory procedures prior to speculative removal from the United States to a third country,²

26 ² In the INA, Congress has enacted provisions governing the determination of the country
 27 to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. &*
 28 *Customs Enf’t*, 543 U.S. 335, 338-341 (2005). For certain aliens arriving in the United States
 (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the statute establishes
 sequences of countries where an alien shall be removed, subject to certain disqualifying
 conditions (e.g., the receiving country will not accept the alien). For instance, under Section
 1231(b)(2), possible countries of removal can include a country designated by the alien, the

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

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

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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 Petitioner's request that the Court enjoin her potential removal to a third country until
2 ICE complies with extra-statutory procedures substantially overlaps with the nationwide
3 class action, *D.V.D.* Indeed, on April 18, 2025, the court in *D.V.D.* certified, pursuant to
4 Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

5 All individuals who have a final removal order issued in proceedings under
6 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
7 proceedings) whom DHS has deported or will deport on or after February 18,
8 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.

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

15 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D.*, 2025 WL
16 1142968, at *14, 18, and 25, membership in the class is mandatory with no opportunity to
17 opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that Rule
18 23 "provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even
19 oblige the [d]istrict [c]ourt to afford them notice of the action"); *Sanderson v. Whoop, Inc.*,
20 No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025) (noting that
"23(b)(2) class members have no opportunity to opt out").

21 The *D.V.D.* court entered a nationwide preliminary injunction requiring DHS to
22 comply with various procedures prior to removing a class member to a third country. The
23 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in
24 the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec. v. D.V.D.*,
25 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class,
26 Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants,
27 including any applicable injunctive relief. Accordingly, this Court should dismiss her claims
28 seeking additional procedures prior to her removal to a third country because they are

1 subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine
2 what Rule 23 was intended to ensure: consistency of treatment for similarly situated
3 individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL
4 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel
5 litigation in district courts all over the country which could ultimately threaten the
6 certification of the underlying class by creating differences among the class members.

7 Because Petitioner is bound as a member of the non-opt out class of individuals
8 governed by the *D.V.D.* nationwide preliminary injunction, this Court should dismiss the
9 habeas petition insofar as it can be read to encompass a request for relief in the nature of a
10 court order enjoining Petitioner's removal to a third country since another court is already
11 considering Petitioner's alleged constitutional right to extra-statutory procedures before
12 removal to a third country.

13 **IV. Conclusion.**

14 Respondents do not oppose entry of judgment on Petitioner's detention-related
15 claims, and in fact, Petitioner has already been granted preliminary relief and released from
16 detention. However, Respondents should not be prohibited from re-detaining Petitioner in
17 the future should conditions change such that her re-detention is authorized by the statutes
18 and regulations then in place. Additionally, although Petitioner did not assert a claim for
19 relief in her habeas petition seeking to enjoin her speculative potential removal to a third
20 county without being provided extra-statutory process, she appears to press that claim and/or
21 otherwise seek that relief. For the reasons stated herein, the Court should deny such relief.

22 Respectfully submitted this 23rd day of October, 2025.

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26 s/ Katherine R. Branch
27 KATHERINE R. BRANCH
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