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I. INTRODUCTION

As Respondents state, Petitioner is a class member in a nationwide class certified in *D.V.D. v U.S. Department of Homeland Security*, ECF 118, 64 and 6-1 Civ. 25-10676-BEM (D. Mass. April 18 and May 21, 2025) (“*D.V.D.*”) This Court should nevertheless deny Respondents’ motion for stay and dismissal alike. Having done so, it should (1) forbid Petitioner’s removal without notice and the opportunity to apply for protection under the Convention Against Torture, and (2) order Petitioner’s release in the meantime.

II. FACTUAL BACKGROUND

Respondents have held Petitioner, Artur Tchibassa, in the Prairieland Detention Center since April 2023. From then until December 20, 2024, when the Board of Immigration Appeals (BIA) dismissed the government’s appeal, 8 U.S.C. § 1226(c) compelled Respondents to detain Mr. Tchibassa as an alien inadmissible on account of his 2003 convictions for hostage-taking and conspiracy to take hostages: these convictions rendered him inadmissible under 8 U.S.C. 1182(a)(2)(i)(I), subjecting him to mandatory detention under 8 U.S.C. § 1226(c).

After the BIA issued an administratively final decision simultaneously ordering Petitioner’s removal and *deferring* it under the Convention Against Torture, 8 U.S.C. § 2131(a)(1)(A) authorized Respondents to detain Mr. Tchibassa for a 90-day statutory removal period. After that statutory removal period expired in March 2025, regulations promulgated to conform to *Zadvydas v. Davis*, 533 U.S. 678 (2001) permitted Respondents to detain Mr. Tchibassa an *additional* three months. 8 C.F.R. § 241.4(k)(1)(ii). These regulations provide that, once those three months elapsed, an “initial HQPDU review will ordinarily be conducted at the

expiration of the three-month period after the 90-day review or as soon thereafter as practicable.”

8 C.F.R. § 241.4(k)(2).

Three days after Petitioner’s 90-day statutory removal period had expired, the United States District Court for the District of Massachusetts entered a Temporary Restraining Order in *D.V.D. v U.S. Department of Homeland Security*, ECF 118, 64 and 6-1 Civ. 25-10676-BEM (D. Mass. April 18 and May 21, 2025). In Respondents’ words,

On March 28, 2025, that court entered a Temporary Restraining Order... enjoining 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 are met.

Respondents’ Response in Opposition to Amended Petition for Writ of Habeas Corpus and Temporary Restraining Order (“Respondents’ Response”) at 2-3. Respondents acknowledge that “Petitioner is a member of the non-opt out *D.V.D.* certified class.” Respondents’ Response at 6.

While *D.V.D.* works its way through the courts, here in Texas the 70-year-old Petitioner nears death. His late-stage Parkinson’s disease confines him to a wheelchair and slurs his speech to such a degree that he can only communicate for brief periods soon after his diurnal medication. While Respondents run the clock, Petitioner has waited more than six months for that initial HQPDU review. As argued below, Petitioner’s *prompt* removal is neither “practical” nor “proper,” and Defendants cannot show “other good cause” to detain him indefinitely. 8 C.F.R. § 241.4(k)(3).

III. LEGAL STANDARDS

A. **Petitioner's inclusion in the *D.V.D.* class does not militate for the dismissal of these proceedings, or for their stay.**

Petitioner's membership in the non-opt out *D.V.D.* certified class, Respondents argue, militates for the dismissal of this action or a stay pending the resolution of *D.V.D.* Respondents' Response at 6, 9. Disposing of a suit during the pendency of a related class action is "a discretion-laden issue" that, as argued below, should not bar the granting of temporary relief. *Mahdejian v. Bradford*, No. 9:25-CV-00191, 2025 U.S. Dist. LEXIS 154931, at *9 (E.D. Tex. July 3, 2025). Respondents insist that the Supreme Court has "signaled that ultimately the [*D.V.D.*] class members would not succeed on the merits... and the Government will prevail." Respondents' Response at 7. Respondents are mistaken. As dissenting Justice Sonia Sotomayor notes, the Supreme Court's silent gesture signals no more than its opinion that "a District Court [had] exceeded its remedial powers." *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153, 2163 (2025).

In the Fifth Circuit, federal district courts have come down on both sides of the question whether to stay proceedings pending the resolution of *D.V.D.* "[T]his Court should butt out," pronounced the United States District Court for the Western District of Louisiana as it denied emergency injunctive relief in *Echavez v. Lyons*, No. 25-1282, 2025 U.S. Dist. LEXIS 221653, at *4 (W.D. La. Sep. 22, 2025). The Southern District of Texas ruled the obverse: "Without clearer direction, the Court will not deny relief this Court deems likely meritorious simply because the class-wide injunction was stayed. *Sanchez v. Noem*, No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 205572, at *36 (S.D. Tex. Oct. 2, 2025). Below, Petitioner urges that the second course is the correct outcome in the case at bar.

B. The Constitution, the INA, and the regulations give Petitioner the right to notice and an opportunity to respond before his removal to an as-yet-undesignated third country.

Respondents insist Immigration and Nationality Act (INA) “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.” Respondents’ Resonse at 5. Their Response tracks a directive issued by the Acting ICE Director to “All ICE Employees” on July 9, 2025.¹ Entitled “Third Country Removals Following the Supreme Court’s Order in *Department of Homeland Security v. D. V.D.*, No. 24A1153 (U.S. June 23, 2025)” (herein, “Directive”), the Directive says,

If the United States has received diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured, and if the Department of State believes those assurances to be credible, the alien may be removed without the need for further procedures.

Even when a receiving country offers no such “diplomatic assurances” (or where these are unworthy of belief), the Directive instructs ICE officers to “not affirmatively ask whether the alien is afraid of being removed” (emphasis in original); only if, unprompted, the alien expresses a fear of torture will U.S. Citizenship and Immigration Services (USCIS) – and not, specifically, an asylum officer – “screen[] for eligibility for protection under section 241(b)(3) of the INA [8 U.S.C. § 1231(b)(3)] and the Convention Against Torture (CAT).” The protocol permits neither review nor appeal of the lone officer’s verdict: “If USCIS determines that the alien has not met this standard, the alien will be removed.”

¹ Posted online at <https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.190.1.pdf>

In their brief, as in the July 9 Directive, Respondents overlook 8 U.S.C. § 1231(b)(3)(A).

In relation to third-country removals *specifically*, this says,

[T]he Attorney General 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 the alien's race, religion, nationality, membership in a particular social group, or political opinion.

(Emphasis added.) Unacknowledged by Respondents, this regulation is a trip-wire, forbidding Petitioner's removal to any country where he faces torture. 28 C.F.R. § 200.1; 8 C.F.R. §§ 208.16-18, 1208.16-18. In sum, third-country removals are subject to the same mandatory protections which availed Petitioner in removal proceedings under 8 U.S.C. § 1229a.

Congress and, through regulation, Respondents themselves have established procedural safeguards to ensure adherence to those mandatory protections. *See* 8 U.S.C. § 1231(b)(2)(E)(i)-(vii); *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 341 (2005); *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d 524, 530-32 (2d Cir. 2006); *Himri v. Ashcroft*, 378 F.3d 932, 938-40 (9th Cir. 2004); *Palavra v. I.N.S.*, 287 F.3d 690, 692 (8th Cir. 2002). To remove Petitioner to a country *other* than his own, Respondents would need to follow the multistep procedures set out in 8 U.S.C. § 1231(b) and required by due process. In Petitioner's case, no country other than Angola meets the criteria for removal under 8 U.S.C. § 1231(b)(2)(A)-(E). Moreover, to remove Petitioner to a third country, the statute requires that an immigration judge *first* determine that it is "impracticable, inadvisable, or impossible" to remove Petitioner to Angola and that the designated third country "will accept [Petitioner] into that country." *Id.* § 1231(b)(2)(E)(vii); *see Himri v. Ashcroft*, 378 F.3d at 939 n. 4 (8 U.S.C. § 1231(b)(E)(vii) "indisputably requires the Attorney General to prove that the proposed country of removal is willing to accept the alien"); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. at 344. It is the immigration judge, not

DHS, that the statute authorizes to designate a third country for removal. 8 U.S.C. § 1231(b)(2)(E)(vii) (“the Attorney General shall remove the alien to. . .”); *see also* 8 C.F.R. § 1240.10(f) (in removal proceedings the immigration judge “shall. . . identify for the record a country, or countries in the alternative, to which the alien’s removal may be made”).

To remove *this* petitioner to a third country would therefore require Respondents to move to *reopen* Petitioner’s removal proceedings to ask an immigration judge to designate a third country under the statutory process. *See, e.g., Sadychov v. Holder*, 565 F. App’x 648, 651 (9th Cir. 2014) (unpublished) (holding that should a new country of removal be designated, “the agency must provide [the noncitizen] with notice and an opportunity to reopen his case for full adjudication of his claim of withholding of removal from” the third country); *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1009, 1011 (W.D. Wash. 2019) (finding that removal proceedings “shall be reopened and a hearing shall be held before the immigration judge so that petitioner may apply for relief from removal” as to a country not designated in prior proceedings).

Adherence to that process must ensure Petitioner’s statutory right to claim deferral of removal, 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16, 1208.16, as well as his right to claim deferral of removal under the Convention Against Torture (“CAT”). *See* 28 C.F.R. § 200.1 (“A removal order. . . shall not be executed in circumstances that would violate [the CAT]”); 8 C.F.R. §§ 208.17-18, 1208.17-1208.18. For this petitioner, the stakes are even higher than for most aliens granted relieve under the Convention Against Torture – that is, who have shown they are more-more-likely-than-not to be tortured in their homeland. A receiving country’s mere “credible assurance” that it will not *directly* torture Petitioner matters little absent a concomitant assurance not to repatriate him. Petitioner once served as “foreign minister and chief spokesman” for the Front for the Liberation of the Enclave of Cabinda, an Angolan insurgent organization.

Tchibassa v. Willis, No. EP-17-CV-272-FM, 2017 U.S. Dist. LEXIS 170945, at *1 (W.D. Tex. Oct. 16, 2017). The immigration judge’s decision deferring his removal required no great power of divination. Even if credible, “assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured” offer no protection unless a receiving country also foreswears repatriating him – thus serving as *proxy* to Angola’s torturers.

Due process *begins* with notice of a third country removal and an opportunity to respond that comports with Fifth Amendment due process. *See D.V.D.*, 145 S. Ct. at 2163 (Sotomayor, J., dissenting) (“[t]he Fifth Amendment unambiguously guarantees that right” to notice of a third country removal so that a noncitizen “learn[s] about it in time to seek an immigration judge’s review”). Notice cannot be “last minute” because that would deprive an individual of a meaningful opportunity to apply for fearbased protection from removal. *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999). Respondents must provide Petitioner time to prepare and present relevant arguments and evidence and to seek reopening of his removal case. “[W]ritten notice of the country being designated” is required and “the statutory basis for the designation, i.e., the applicable subsection of § 1231(b)(2)” must be specified. *Aden*, 409 F. Supp. 3d at 1019; see also *D.V.D. v. U.S. Dep’t of Homeland Sec.*, No. 25-cv-10676-BEM, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025) (“All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen’s order of removal, must be preceded by written notice to both the non-citizen and the non-citizen’s counsel in a language the non-citizen can understand.” (internal citation omitted)); *Andriasian*, 180 F.3d at 1041 (due process requires notice to the noncitizen of the right to apply for asylum and withholding to the country where they will be removed).

Due process also demands that the government “ask the noncitizen whether he or she

fears persecution or harm upon removal to the designated country and memorialize in writing the noncitizen's response. This requirement ensures DHS will obtain the necessary information from the noncitizen to comply with § 1231(b)(3) and avoids [a dispute about what the officer and noncitizen said]." *Aden*, 409 F. Supp. 3d at 1019.

Respondents' third country removal program skips over these statutory and constitutional procedural protections. According to ICE's July 9, 2025 guidance, any "alien may be removed without the need for further procedures individuals can be removed to third countries," provided only that "the United States [have] received ['credible'] diplomatic assurances from the country of removal that aliens removed from the United States will not be persecuted or tortured." Respondents see no "need for further procedures," but the Constitution dictates otherwise. *See Vu v. Noem*, No. 1:25-cv-01366-KES-SKO (HC), 2025 WL 3114341, at *8 (E.D. Cal. Nov. 6, 2025) ("If ICE follows this policy, petitioner would have no meaningful opportunity to present [a third-country-removal] claim in any court before he is removed to a third country."); *Cruz-Medina v. Noem*, No. 25-cv-1768-ABA, -- F.Supp.3d --, 2025 WL 2841488, at *7 (D. Md. Oct. 7, 2025) ("[R]egulations . . . entitle noncitizens to *de novo* review by an immigration judge of negative asylum officer determinations . . ."); *Kumar v. Wamsley*, No. C25-2055-KKE, 2025 WL 3204724, at *5 (W.D. Wash. Nov. 17, 2025) (agreeing "that ICE has deprived [the petitioner] of and is continuing to deprive him of . . . baseline procedural protections via its third country removal policy"); *Sagastizado Sanchez v. Noem*, No. 5:25-CV-00104, -- F.Supp.3d --, 2025 WL 2957002, at *12 (S.D. Tex. Oct. 2, 2025) (faulting Defendants' policy for failing to require IJ review); *A.A.M. v. Andrews*, No. 1:25-cv-01514-DC-DMC, 2025 WL 3485219, at *7-9 (E.D. Cal. Dec. 4, 2025) (same); *Esmail v. Noem*, No. 2:25-cv-08325-WLH-RAO, 2025 WL 3030589, at *7 (C.D. Cal. Sept. 26, 2025) ("[W]here ICE's stated policy is that it will only

provide a reasonable fear interview when a noncitizen affirmatively asserts such fear, this fails to comport with due process.”); *Nguyen v. Scott*, No. 2:25-cv-01398, -- F.Supp.3d --, 2025 WL 2419288, at *18-19 (W.D. Wash. Aug. 21, 2025) (concluding “that removal to a third country under ICE’s current policy, without meaningful notice and reopening of his removal proceedings for a hearing, would [likely] violate due process”).

Only by adhering to DHS’ facially illegal guidance, thus *sidestepping due process*, might Respondents “promptly” effectuate Petitioner’s removal to a country other than Angola. The receiving country need not even offer any “assurance” regarding Petitioner’s *repatriation* to Angola, where he assuredly faces torture as a former leader of an ongoing insurgency. *See M.T.M. v. Andrews*, No. 2:25-cv-08208-SRM-PD, 2025 U.S. Dist. LEXIS 179261, at *27 (C.D. Cal. Sep. 11, 2025) (“[I]t appears the third countries would likely repatriate him to Senegal where he would face torture.”)

C. It is the Respondents who bear the burden of presenting evidence they are likely to remove Petitioner in the foreseeable future, and they have failed to do so.

Coyly claiming that “real progress is being made on Petitioner’s removal” to an unspecified country, Respondents insist that “the burden is on the petitioner to show ‘good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.’” Respondents’ Response at 13-15. Respondents might reasonably be asked to share how, precisely, any petitioner might meet this burden.

Among the 194 nations on Earth besides our own, Petitioner knows of 20 that have signed “asylum cooperative agreements”: Belize, Costa Rica, Ecuador, El Salvador, Equatorial Guinea, Eswatini, Ghana, Guatemala, Honduras, Kosovo, Liberia, Libya, Mexico, Panama, Paraguay, Poland, Rwanda, South Sudan, Uganda, Uzbekistan. The list grows rapidly, and it may

not even matter: DHS' June 23 guidance on "Third Country Removals" does not mention Asylum Cooperative Agreements or the section of law that describes them, 8 U.S.C. § 1158(a)(2)(A).

In *Zadvydas v. Davis*, the Supreme Court held,

After this 6-month [presumptively reasonable] period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.

533 U.S. 678, 701 (2001). Where the Government has hidden the ball and erased the goal lines and hash marks, the *existence* of a due process requirement of notice and the chance-to-respond (see above) gives "good cause to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* To hold otherwise would render meaningless *Zadvydas*' conclusion that the INA, "read in light of the Constitution's demands... does not permit indefinite detention." 533 U.S. at 689.

IV. ARGUMENT

Respondents argue that Supreme Court's June 23, 2025 decision staying the injunction in *D.V.D.* indicates that "the Government is likely to prevail on the merits of its appeal," and for this reason "this Court should dismiss the action." *Id.* In *Sanchez v. Noem*, Judge Diana Saldaña confronted essentially these same argument: "Respondents contend that the Court should dismiss [Respondent's] petition and deny his request for relief, 'because the relief requested here is basically the same as the relief requested in *D.V.D.*'" No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 205572, at *18 (S.D. Tex. Oct. 2, 2025). The judge addressed each of the arguments that Respondents raise in the instant case, dismissing each in its turn.

“[T]his Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class,” urge Respondents. Respondent’s Response at 6. Judge Saldaña’s reasoning is apt here:

“[L]ater relief *in D.V.D.* will not prevent [Petitioner] from being removed... without due process in the meantime. And relief... here is distinguishable in part from *D.V.D.* because plaintiffs there did not seek class-wide injunctive relief with respect to future claims for withholding of removal. To dismiss Petitioner’s claims for preliminary injunctive relief at this time would effectively preclude Sagastizado from the relief he seeks entirely and potentially foreclose any relief that he could be entitled to as part of the *D.V.D.* class if he is removed before the class-wide claims are resolved.

2025 U.S. Dist. LEXIS 205572, at *22-23.

Asserting that “the Government is likely to prevail on the merits of its appeal,” Respondents urge that “this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court” (Respondents’ Response at 6-7). To this argument, Federal District Court for the Southern District of Texas responded,

Because the stay is not indicative of the Supreme Court’s assessment of the merits, the Court rejects Respondents’ argument that the Supreme Court “signaled that ultimately the class members would not succeed on the merits of the case.” (Dkt. 25 at 3.) Notably, the class-wide nature of the *D.V.D.* injunction alone could have justified the stay, and that justification would not undermine the merits of an individual claim for relief. *See Nguyen*, 2025 U.S. Dist. LEXIS 162859, 2025 WL 2419288, at *23. Therefore, reading into the Supreme Court’s stay is an inherently speculative endeavor.

2025 U.S. Dist. LEXIS 205572, at *36.

The court in *Sanchez* likewise rejected the argument that “members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action [suit].” Respondents’ Response at 8.

The Court finds it counterintuitive that non-opt-out class membership, for the purposes of granting a preliminary injunction to prevent removal without due process, could prevent individuals from making their own claims for due process while that injunction is stayed on a class-wide basis.

2025 U.S. Dist. LEXIS 205572, at *23.

Respondents' comity claim likewise fails. Respondents cite *Gillespie v. Crawford*: "To allow individual suits would interfere with the orderly administration of the class action and risk inconsistent adjudications." 858 F.2d 1101, 1103 (5th Cir. 1988). So long as Respondents insist that receipt of "sufficient assurance" green-lights a class member's removal "without any further process" (Respondents' Response at 5), they are claiming the right to render moot any decision favorable to this petitioner. As Judge Saldaña observes, "later relief in *D.V.D.* will not prevent [the petitioner] from being removed... without due process in the meantime." *Sanchez v. Noem*, No. 5:25-CV-00104, 2025 U.S. Dist. LEXIS 205572, at *22 (S.D. Tex. Oct. 2, 2025). Absent a pledge *not* to remove Petitioner before *D.V.D.* is decided, accommodating Respondents' anodyne appeal to "orderly administration" would give DHS *carte blanche* to remove Petitioner under their scofflaw Directive.

V. CONCLUSION

Petitioner cannot be removed within the foreseeable future unless Respondents have first deprived him of meaningful notice and an opportunity to be heard. This Court should therefore order his release from detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001). This Court should also enjoin Petitioner's removal unless he is allowed to *reopen* his removal proceedings to ask an immigration judge to designate a third country under the process outlined in the Immigration and Nationality Act and Title 8 of the Code of Federal Regulations.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Artur Tchibassa, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 31st day of December 2025.

/s/ Paul S. Zoltan
Paul S. Zoltan