

1 TIMOTHY COURCHAIINE  
United States Attorney  
2 District of Arizona  
3 KATHERINE R. BRANCH  
Assistant United State Attorney  
4 Arizona State Bar No. 025128  
5 Two Renaissance Square  
40 North Central Avenue, Suite 1800  
6 Phoenix, Arizona 85004-4449  
7 Telephone: (602) 514-7500  
Facsimile: (602) 514-7760  
8 E-Mail: Katherine.Branch@usdoj.gov  
*Attorneys for Respondents*  
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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Hijran Malik,

13 Petitioner,

14 v.

15 Fred Figueroa, et al.,

16 Respondents.

No. 2:25-cv-03570-GMS--JFM

**RESPONSE TO FIRST AMENDED  
VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS PURSUANT TO 28  
U.S.C. § 2241**

17 Respondents Fred Figueroa, Warden, Eloy Detention Center; John Cantu, Phoenix  
18 Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"); Todd Lyons,  
19 Acting Director of ICE; Kristi Noem, Secretary of the Department of Homeland Security  
20 ("DHS"); and Pam Bondi, Attorney General of the United States ("Respondents"), by the  
21 through undersigned counsel, respond to the First Amended Verified Petition for Writ of  
22 Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Doc. 7). Petitioner argues that his continued  
23 detention violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment because there is no  
24 reasonable probability of his removal to Afghanistan in the reasonably foreseeable future.  
25 Doc. 7 at ¶¶ 47-57. Petitioner further argues that is detention pending removal to any third  
26 country would violate his due process rights. Doc. 7 at ¶¶ 58-61. The Court has ordered  
27 Respondents to show cause why the Petition should not be granted. *See* Doc. 11.  
28

1 **I. Factual background.**

2 Petitioner is a citizen of Afghanistan. Ex. A, Decl. of David Sandoval, at ¶ 3.  
3 Petitioner entered the United States on or about July 8, 2024, without being admitted or  
4 paroled. Ex. A at ¶¶ 3, 4. Petitioner was issued an expedited removal order pursuant to 8  
5 U.S.C. § 1225(b)(1). Ex. A at ¶ 5. Petitioner claimed a fear of being returned to Afghanistan,  
6 which was determined by an asylum officer to be credible. Ex. A at ¶ 6. As a result,  
7 Petitioner was issued a Notice to Appear. Ex. A at ¶ 7. On February 5, 2024, an Immigration  
8 Judge denied Petitioner's applications for relief and ordered Petitioner removed to  
9 Afghanistan. Ex. A at ¶ 9.

10 On February 5, 2025, ICE's Enforcement and Removal Operations ("ERO") unit at  
11 Eloy created a travel packet to remove Petitioner to Afghanistan. Ex. A at ¶ 10. On February  
12 7, 2025, ERO Eloy discovered that it did not have a passport or a national identification card  
13 for Petitioner and gave him paperwork to fill out to request a travel document, which he  
14 requested time to review. Ex. A at ¶ 11. On February 9, 2025, ERO Eloy picked up the travel  
15 document request paperwork from Petitioner. Ex. A at ¶ 12. On February 16, 2025, ERO  
16 Eloy determined that information was missing from the request. Ex. A at ¶ 13. On February  
17 24, 2025, ERO Eloy submitted the travel document request to ERO Headquarters. Ex. A at  
18 ¶ 14. On February 26, 2025, ERO Headquarters replied with that revisions were needed. Ex.  
19 A at ¶ 15.

20 On February 27, 2025, a private airline with flights to Afghanistan advised ERO  
21 Headquarters that Petitioner would either need a passport or a letter from Ministry of  
22 Foreign Affairs Afghanistan (Transportation Letter) to be able to board a flight. Ex. A at ¶  
23 16. On May 21, 2025, ERO Eloy sent an Afghan Transportation Letter to the U.S. Embassy  
24 in Doha, Qatar for delivery to the Afghan Embassy. Ex. A at ¶17.

25 On June 16, 2025, while waiting for a response from the Afghan Embassy, ERO Eloy  
26 sent requests to Kuwait and El Salvador to accept Mr. Malik for removal. Ex. A at ¶¶ 18,  
27 19. On July 1, 2025, Kuwait and El Salvador denied ERO's request to remove Petitioner to  
28 their countries. Ex. A at ¶ 20.

1 On July 23, 2025, ERO Eloy sent a request to the Detention Deportation Officers  
2 (DDO) at ERO Headquarters for any updates regarding issuance of a travel document for  
3 Petitioner. Ex. A at ¶ 21. On July 24, 2025, the DDO advised ERO Eloy that Afghan cases  
4 denied due to lack of a passport had been sent to the Department of State for processing. Ex.  
5 A at ¶ 22. On October 29, 2025, ERO Eloy was advised that Petitioner has been listed on a  
6 spreadsheet by ERO Headquarters for pending transportation letters. Ex. A at ¶ 23. There is  
7 no legal impediment to removing Petitioner to Afghanistan. Ex. A at ¶ 25. The only step  
8 that remains is for Afghanistan to issue a transportation letter. Ex. A at ¶ 25. Upon the  
9 issuance of the letter, ERO Eloy will remove Petitioner to Afghanistan. Ex. A at ¶ 25.

10 **II. Petitioner's detention is authorized by 8 U.S.C. § 1231(a)(6) and is not**  
11 **prolonged.**

12 Petitioner relies on the Supreme Court's opinion in *Zadvydas v. Davis*, 533 U.S. 678  
13 (2001), to allege a violation of his constitutional rights. Ordinarily, once an alien has been  
14 deemed inadmissible and ordered removed, the Government "shall remove the alien from  
15 the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This is commonly  
16 referred to as the "removal period." However, another provision, 8 U.S.C. § 1231(a)(6),  
17 permits detention of an alien after the removal period. Although the post-removal-period  
18 detention statute contains no time limit on detention, in *Zadvydas*, the Supreme Court  
19 explained that the Fifth Amendment's Due Process Clause "limits an alien's post-removal-  
20 period detention to a period reasonably necessary to bring about the alien's removal from  
21 the United States. It does not permit indefinite detention." 533 U.S. at 689. The purpose of  
22 § 1231(a)(6) detention is to effectuate removal. *See Demore v. Kim*, 538 U.S. 510, 527  
23 (2003) (analyzing *Zadvydas* and explaining the removal period was based on the  
24 "reasonably necessary" time in order "to secure the alien's removal").

25 To avoid reading the statute as violating the Fifth Amendment Due Process Clause  
26 and to create uniform standards for evaluating challenges to post-removal-period detention,  
27 the Supreme Court held that any detention of six months or less was a "presumptively  
28 reasonable period of detention," and that "an alien may be held in confinement until it has  
been determined that there is no significant likelihood of removal in the reasonably

1 foreseeable future.” *Zadvydas*, 533 U.S. at 701. *Zadvydas* places the burden on the alien to  
2 show, after a detention period of six months, that there is “good reason to believe that there  
3 is no significant likelihood of removal in the reasonably foreseeable future.” *Id.* If the alien  
4 makes that showing, the Government must then introduce evidence to refute that assertion  
5 to keep the alien in custody. *See id.*; *see also Xi v. I.N.S.*, 298 F.3d 832, 839-40 (9th Cir.  
6 2002). The court must “ask whether the detention in question exceeds a period reasonably  
7 necessary to secure removal. It should measure reasonableness primarily in terms of the  
8 statute’s basic purpose, namely, assuring the alien’s presence at the moment of removal.  
9 *Zadvydas*, 533 U.S. at 699.

10 Here, Petitioner as an alien who was not admitted or paroled, Petitioner was subject  
11 to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). The 90-day removal period  
12 began to run on the date the order of removal became administratively final. 8 U.S.C.  
13 § 1231(a)(1)(B)(i). The removal order became administratively final on February 4, 2025,  
14 because the parties waived appeal (Doc. 7-1 at 4). *See* 8 U.S.C. § 1101(a)(47)(B)(i); *see also*  
15 8 C.F.R. § 1241.1(a).

16 The 90-day removal period expired on May 5, 2025. Petitioner filed this action on  
17 September 29, 2025—7 months and 25 days after his removal order became final. However,  
18 *Zadvydas* does not require that Petitioner be released from immigration detention after six  
19 months. Rather, Petitioner must show that there is no reason to believe that there is no  
20 significant likelihood of removal in the reasonably foreseeable future. Aside from a single  
21 conclusory allegation that “Mr. Malik has ‘good reason to believe that there is no significant  
22 likelihood of removal in the reasonably foreseeable future[,]” Doc. 7 at 35 (quoting  
23 *Zadvydas*), Petitioner does not even attempt to show that his removal is not likely nor does  
24 he explain what his “good reason” is for believing that his removal is unlikely to occur. *See*  
25 *Mattete v. Loiselle*, No. 2:06CV652, 2007 WL 3223304, at \*4 (E.D. Va. Oct. 26, 2007)  
26 (“Even though a nation has not granted travel documents to a petitioner, or has refused to  
27 grant travel documents, [that] does not prove that a petitioner has no reasonable likelihood  
28 of being removed.”). Indeed, so long as “[p]rogress, however slow, is being made” towards  
an alien’s removal, his continued detention is in accord with due process under *Zadvydas*.

1 *See Khan v. Fasano*, 194 F. Supp. 2d 1134, 1137 (S.D. Cal. 2001).

2 Even if Petitioner had met his initial burden to demonstrate that “there is no  
3 significant likelihood of removal in the reasonably foreseeable future” such that the burden  
4 then shifted to the Government to produce evidence in rebuttal, the Government has adduced  
5 sufficient evidence to show that it has taken active steps to secure Petitioner’s removal.  
6 Afghanistan has not rejected the United States’ request for a travel document for Petitioner.  
7 Rather, because Petitioner did not have a passport or national identification card, ERO had  
8 to send his case to the Department of State for processing, and Petitioner is now pending a  
9 transportation letter from Afghanistan. *See* Ex. A at ¶¶ 16, 17, 22, 23. As soon as  
10 Afghanistan issues the transportation letter, Petitioner will be removed. Ex. A at ¶ 25. The  
11 Government is not at an impasse in removing Petitioner, his removal is significantly likely,  
12 and Petitioner’s detention is not unconstitutionally prolonged. Accordingly, the Amended  
13 Petition should be denied

14 **III. The Court lacks jurisdiction to stay Petitioner’s removal.**

15 **1. 8 U.S.C. § 1252(g) bars review of Petitioner’s challenge to the execution  
16 of his removal order.**

17 Petitioner’s claim seeking a stay of removal pending the completion of extra-  
18 statutory procedures to remove him is barred by 8 U.S.C. § 1252(g). Congress spoke clearly  
19 that “no court” has jurisdiction over “any cause or claim” arising from the execution of  
20 removal orders, “notwithstanding any other provision of law,” whether “statutory or  
21 nonstatutory.” 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping  
22 provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to  
23 the All Writs Act and Administrative Procedure Act) of claims arising from a decision or  
24 action to “execute” a final order of removal. *See Reno v. American-Arab Anti-*  
*Discrimination Committee (“AADC”),* 525 U.S. 471, 482 (1999).

25 Petitioner’s claims arise from his concerns about the execution of his removal order  
26 and his detention pending execution of his removal order, and the Amended Petition seeks,  
27 in part, to enjoin Respondents from “removing him to a third country without first providing  
28 him with 21 days’ notice written in a language he can understand and a meaningful

1 opportunity to contest such removal[,]" Doc. 7 at Prayer for Relief at (e). He also seeks his  
2 immediate release from custody. Doc. 7 at Prayer for Relief at (d). Numerous courts of  
3 appeals, including the Ninth Circuit, have held that claims seeking a stay of removal—even  
4 temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v.*  
5 *Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred petitioner's  
6 claim seeking a temporary stay of removal while he pursued a motion to reopen his  
7 immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268,  
8 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim  
9 brought by an alien arising from the government's decision to execute a removal order. If  
10 we held otherwise, any petitioner could frame his or her claim as an attack on the  
11 government's *authority* to execute a removal order rather than its *execution* of a removal  
12 order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner's  
13 argument that jurisdiction remained because petitioner was challenging DHS's "legal  
14 authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975  
15 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a  
16 removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered  
17 by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir.  
18 2018) (vacating district court's injunction staying removal, concluding that § 1252(g)  
19 stripped district court of jurisdiction over removal-based claims and remanding with  
20 instructions to dismiss those claims); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir.  
21 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final  
22 order of removal, and language barring "any cause or claim" made it "unnecessary for  
Congress to enumerate every possible cause or claim").

23 **2. The Foreign Affairs Reform and Restructuring Act of 1998 precludes**  
24 **Petitioner's claims related to additional CAT process.**

25 Petitioner's claims seeking an order from the Court requiring Respondents to provide  
26 him with additional procedures beyond what the Convention Against Torture ("CAT")  
27 provides run afoul of Section 2242(d) of the Foreign Affairs Reform and Restructuring Act  
28 of 1998 ("FARRA"), which implements Article 3 of CAT and provides that:

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

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

8 Any judicial review of any claim arising under CAT is available exclusively on an  
9 individualized basis “as part of the review of a final order of removal” in the courts of  
10 appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same  
11 for “any other determination made with respect to the application of [CAT]”); *cf. Nasrallah*,  
12 590 U.S. at 580 (discussing FARRA). Under FARRA, “no court” has jurisdiction to review  
13 DHS’s implementation of CAT, yet that is precisely what Petitioner seeks here by asking  
14 the Court to order ICE to comply with additional procedures so that Petitioner may seek  
15 withholding of removal under CAT to a third country.

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

22 **IV. Petitioner is a *D.V.D.* class member, so his duplicative claims are foreclosed by**  
23 **the parallel case.**

24 This Court should dismiss Petitioner’s claim asserted in Count III (which is labeled  
25 as Count IV) seeking additional, extra-statutory procedures prior to removal from the United  
26 States to a third country,<sup>1</sup> because those claims are already being adjudicated in the

27 <sup>1</sup> In the INA, Congress has enacted provisions governing the determination of the country  
28 to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. Immigr. &*  
*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 nationwide *D.V.D.* class action. *See D.V.D. v. U.S. Dep't of Homeland Sec.*, No. 25-cv-  
2 10676 (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district  
3 court “has broad discretion to stay proceedings as an incident to its power to control its own  
4 docket). As part of district courts’ discretion to administer their docket, courts have  
5 dismissed, without prejudice, suits brought by individuals whose claims are duplicative of  
6 class claims in other litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in  
7 habeas case, discussing prior stay of Fifth Amendment challenge pending completion of  
8 pending class action); *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL  
9 18396018, at \*4-6 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL  
10 319917 (C.D. Cal. Jan. 18, 2023) (dismissing habeas case brought by federal prisoner related  
11 to COVID-19 measures reasoning that petitioner’s claims were based, in part, on a  
12 duplicative class action and were “not property before the court.”).

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

24 Petitioner’s claims seeking to delay or otherwise prohibit his removal to a third  
25 country until ICE complies with extra-statutory procedures substantially overlap with the

26 alien’s country of citizenship, the alien’s previous country of residence, the alien’s country  
27 of birth, and the country from which the alien departed for the United States. *See* 8 U.S.C.  
28 § 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 him. *See* 8 U.S.C. § 1231(b)(1)(C)(iv), (2)(E)(vii).

1 nationwide class action, *D.V.D.* Indeed, on April 18, 2025, the court in *D.V.D.* certified,  
2 pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

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

7 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at \*11  
8 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1323697  
9 (D. Mass. May 7, 2025), and *opinion clarified*, No. CV 25-10676-BEM, 2025 WL 1453640  
10 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S. Dep't of*  
11 *Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26, 2025).  
12 Because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D.*, 2025 WL  
13 1142968, at \*14, 18, and 25, membership in the class is mandatory with no opportunity to  
14 opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that Rule  
15 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does not even  
16 oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v. Whoop, Inc.*,  
17 No. 3:23-CV-05477-CRB, 2025 WL 744036, at \*15 (N.D. Cal. Mar. 7, 2025) (noting that  
18 “23(b)(2) class members have no opportunity to opt out”).

19 The *D.V.D.* court entered a nationwide preliminary injunction requiring DHS to  
20 comply with various procedures prior to removing a class member to a third country. The  
21 Supreme Court stayed that preliminary injunction pending the disposition of an appeal in  
22 the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec. v. D.V.D.*,  
23 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class,  
24 Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants,  
25 including any applicable injunctive relief. Accordingly, this Court should dismiss his claims  
26 seeking additional procedures prior to his removal to a third country because they are  
27 subsumed within the issues being litigated in *D.V.D.* To do otherwise would undermine  
28 what Rule 23 was intended to ensure: consistency of treatment for similarly situated

1 individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL  
2 1098789, at \*11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel  
3 litigation in district courts all over the country which could ultimately threaten the  
4 certification of the underlying class by creating differences among the class members.  
5 Another court is already considering Petitioner's alleged constitutional right to extra-  
6 statutory procedures before removal to a third country. This Court should therefore dismiss  
7 the claims seeking such relief.

8 **V. Conclusion.**

9 Petitioner has not met his burden to show that there is no significant likelihood of  
10 removal in the reasonably foreseeable future. Rather, because Petitioner lacked a passport  
11 or national identity card, ERO had to go through the Department of State to request a  
12 transportation letter from the Afghan Embassy. As soon as the letter is issued by  
13 Afghanistan, Petitioner will be removed. Thus, Petitioner's removal is significantly likely  
14 to occur in the reasonably foreseeable future and Counts I and II of the Amended Petition  
15 should be denied.

16 The Court should deny Count III because Petitioner is a member of the non-opt-out  
17 class in *D.V.D.* and because the Court lacks jurisdiction to enjoin Petitioner's removal or to  
18 require Respondents to provide additional process beyond what is statutorily required by  
19 CAT.

20 Respectfully submitted this 26th day of November, 2025.

21 TIMOTHY COURCHINE  
22 United States Attorney  
23 District of Arizona

24 *s/ Katherine R. Branch*  
25 KATHERINE R. BRANCH  
26 Assistant United States Attorney  
27 *Attorneys for Respondents*  
28