TIMOTHY COURCHAINE
United States Attorney
District of Arizona
LINDSEY E. GILMAN
Assistant U.S. Attorney
Arizona State Bar No. 034003
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
Email: Lindsey.Gilman@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Frandy Joseph, Petitioner, v. David R. Rivas, et al., Respondents.	No. CV-25-03754-PHX-DJH (CDB) **RESPONSE IN OPPOSITION TO EMERGENCY MOTION FOR HEARING ON APPLICATION FOR A TEMPORARY RESTRAINING ORDER** **AND RESPONSE TO WRIT FOR HABEAS CORPUS**

Respondents David R. Rivas, Warden, San Luis Regional Detention Center; Gregory J. Archambeault, San Diego Field Director, U.S. Immigration and Customs Enforcement (ICE), Kristi Noem, Secretary of Department of Homeland Security (DHS), and Pamela Jo Bondi, Attorney General of the United States (Respondents), through undersigned counsel, respond in opposition to Petitioner's Emergency Motion, and responds to the areas directed under this Court's Order issued on November 13, 2025. Docs. 21 and 22. Respondents also respond to the habeas petition.[1]

[1] Respondents were served with the petition on October 28, 2025, making the 20-day deadline to respond to the petition as November 17, 2025. Respondents combine its

I. FACTUAL AND PROCEDURAL BACKGROUND.

Respondents incorporate by reference the factual background and history provided in Exhibit A that was attached to its Response in Opposition to Petitioner's Request for a TRO, Doc. 11, and reattaches here as Exhibit A. All additional information is provided in an additional declaration, attached as Exhibit B.

As discussed previously, to effectuate Petitioner's removal to Haiti, ERO must first receive approval from the government of Haiti. *See* Declaration of Concepcion Arredondo, Supervisory Detention and Deportation Officer, attached as Exhibit B, at ¶ 5. Once ERO has approval, the field generates an I-296, and that I-296 is then used as the ID document and travel document (TD) for removal. *Id.* ERO will then schedule a flight for petitioner. *Id.* Since Petitioner's removal became final, ERO has worked expeditiously to effectuate Petitioner's removal to Haiti. *Id.* These removal efforts remain ongoing. *Id.*

As the travel documents for Haiti have not yet been issued, ERO intends to submit a request to the Mexican government to inquire if they would accept the removal of Petitioner.[2] *Id.* at ¶ 6. Petitioner was transferred to Imperial Regional Detention Facility on November 14, 2025, begin the process of processing of submitting that request.[3] *Id.* Once the request is submitted, if the Mexican government agrees to accept Petitioner's removal, then the Petitioner will be served with a written Notice of Third Country Removal. *Id.* at ¶ 7. This written Notice will notify the Petitioner that ERO intends to remove him to Mexico. *Id.* ERO will generally wait at least 24 hours following service of the Notice of Removal before effectuating removal. *Id.* at ¶ 8. Should the Petitioner affirmatively state a fear of

---

response here to avoid additional duplicative briefing and preserve judicial resources.

[2] As the government explained in its Application for a Stay filed in the *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S.S.C. May 2, 2025) matter, "[f]inding third countries willing and able to accept aliens is a delicate diplomatic endeavor. By interjecting itself into that process, and disrupting those carefully negotiated arrangements, the court's actions have already caused major and irremediable harm to U.S. foreign policy." *Id.*

[3] The Attorney General's authority under 8 U.S.C. § 1231(g)(1) to determine the appropriate place of detention is discretionary and not subject to judicial review. Additionally, transfers of this nature are not irregular or out of the ordinary in the incident of immigration detention.

removal to Mexico, Petitioner will be referred to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under section 251(b)(3) of the Immigration and Nationality Act (INA) and the Convention Against Torture (CAT). *Id.* at ¶ 8.

Petitioner was under the mistaken impression that he was being removed to Mexico by 6:00pm on Thursday, November 13, 2025, prompting this emergency motion. Doc. 21. Petitioner's removal to Mexico is currently enjoined under this Court's Order issued on November 13, 2025, pending resolution of Petitioner's emergency motion. Doc. 22.

In its Order, the Court directed Respondents to answer the following: (1) the reasons petitioner was unable to be removed to Haiti, (2) the specific notice provided about his removal to Mexico, (3) the opportunity received to request deferral or withholding of removal, (4) what efforts were taken to evaluate Petitioner's request if made, and the basis for choosing Mexico as an alternate country of removal. Doc. 22.

As supported under Exhibit B, first, Petitioner has not currently been removed to Haiti because the travel documents for Haiti have not yet been issued and removal efforts there remain ongoing. Ex. B at ¶ 6. Second, he has not yet been served with a notice of removal to Mexico, and thus, he has not made any fear claims that invite a chance to request deferral or withholding or removal. Third, if the Mexican government agrees to accept him, the process delineated above will allow him to state a fear claim before USCIS, if he raises any. Respondents address the fourth category under Section II (B).

II. THE COURT LACKS JURISDICTION TO STAY PETITIONER'S REMOVAL TO A THIRD COUNTRY.

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

Petitioner's emergency motion seeks a stay of removal to Mexico, pending the completion of extra-statutory procedures to remove him. However, this claim is barred by the plain language of 8 U.S.C. § 1252(g).

Congress spoke clearly 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. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All Writs Act and Administrative Procedure Act) of claims arising from a decision or action to "execute" a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee* ("*AADC*"), 525 U.S. 471, 482 (1999).

Petitioner's emergency motion arises from his concerns about the execution of his removal order. The Petition seeks, in part, to require ICE to provide him with additional procedures prior to his removal to a third country, such an opportunity to challenge his removal to Mexico "through the immigration courts and the federal courts in habeas." Doc. 21. Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims seeking a stay of removal—even temporarily to assert other claims to relief—are barred by Section 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding Section 1252(g) barred petitioner's claim seeking a temporary stay of removal while he pursued a motion to reopen his immigration proceedings); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to consider 'any' cause or claim brought by an alien arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (rejecting petitioner's argument that jurisdiction remained because petitioner was challenging DHS's "legal authority" as opposed to its "discretionary decisions"); *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 297 (3d Cir. 2020) (observing that "the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it" and that "[b]oth are covered by the statute") (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district court's injunction staying removal, concluding that § 1252(g) stripped district court of jurisdiction over removal-based claims and remanding with instructions to dismiss those claims); *Silva*

v. United States, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

Here, Petitioner's (premature) challenge to the Government's ability to execute a valid final removal order is squarely prohibited by 8 U.S.C. § 1252(g).

B. DHS Has Discretion in Identifying Countries for Third-Country Removal.

In this case, DHS has discretionarily chosen Mexico as a third country for removal pending acceptance by the Mexican government. The procedures to identify countries to which a noncitizen may be removed are outlined at 8 C.F.R. § 241.15. Notably, that section gives DHS the sole discretion to remove a noncitizen to any country designated in 8 U.S.C. § 1231(b). *See* 8 C.F.R. § 241.15(a). The countries designated in 8 U.S.C. § 1231(b) are:

> (i) The country of which the alien is a citizen, subject, or national.
>
> (ii) The country in which the alien was born.
>
> (iii) The country in which the alien has a residence.
>
> (iv) A country with a government that will accept the alien into the country's territory if removal to each country described in a previous clause of this subparagraph is impracticable, inadvisable, or impossible.

Reading 8 C.F.R. § 241.15(a) and 8 U.S.C. § 1231(b)(iv) together, the Secretary has the sole discretion to decide to remove a noncitizen to a third country. *See* 8 C.F.R. § 241.15(a) (providing the Secretary with "discretion" to remove a noncitizen without providing for review of that discretionary decision). No statute or regulation provides for review of such decision by an Immigration Judge ("IJ") or the Board of Immigration Appeals.

On March 30, 2025, DHS Secretary Kristi Noem issued a memorandum entitled Guidance Regarding Third Country Removal ("Guidance"), which outlines the procedures that DHS intends to follow when a noncitizen, with a final order of removal pursuant to

INA sections 240, 241(a)(5), or 238(b), including noncitizens with a grant of withholding of removal under INA § 241(b)(3), to a country other than what was designated in removal orders. Per the Guidance, after a third country of removal has been identified by DHS and the noncitizen has been informed of the intention to remove him to such third country, if the noncitizen affirmatively states a fear, USCIS will initiate a screening process.

The screening process requires USCIS to determine if the noncitizen would more likely than not be persecuted on account of a statutorily protected ground or tortured in the third country for removal. If the noncitizen has not met this standard, the noncitizen will be removed. If the noncitizen has met this standard and has not previously been in proceedings before an IJ, unlike this Petitioner who has been through removal proceedings, only then will USCIS refer the matter to the immigration court in the first instance.

Petitioner already went through the immigration courts during his removal proceedings and would have had the opportunity to raise a fear claim there. Thus, his request to be given an "opportunity challenge removal to Mexico through the *immigration courts* and the federal habeas courts in habeas" lacks merit and would unnecessarily prolong the removal process. Doc. 21.

III. PETITIONER IS A *D.V.D.* CLASS MEMBER, SO HIS DUPLICATIVE CLAIMS ARE FORECLOSED BY THE PARALLEL CASE.

Petitioner's request seeking additional, extra-statutory procedures prior to removal from the United States to a third country[4] are already being adjudicated in the nationwide

[4] In the INA, Congress has enacted provisions governing the determination of the country to which an alien is to be removed. *See* 8 U.S.C. § 1231(b)(1), (2); *Jama v. 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 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). Importantly, 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.

D.V.D. class action. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that a district court "has broad discretion to stay proceedings as an incident to its power to control its own docket). As part of district courts' discretion to administer their docket, courts have dismissed, without prejudice, suits brought by individuals whose claims are duplicative of class claims in other litigation. *See, e.g.*, *Griffin v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay of Fifth Amendment challenge pending completion of pending class action).

For example, a district court in the Central District of California dismissed without prejudice a habeas case brought by a federal prisoner. *Herrera v. Birkholz*, No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at *7 (C.D. Cal. Dec. 1, 2022), *report and recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023). The court reasoned that petitioner's claims were based, in part, on a duplicative class action and were "not property before the court." *Herrera*, 2022 WL 18396018, at *4-6. In the related class action case, Lompoc prisoners had alleged that the BOP had failed to take adequate safety measures against COVID-19. *Id.* at *5. Likewise, in the habeas case, the petitioner-plaintiff alleged that the Lompoc prison conditions created unreasonable COVID-19 risks, such as the alleged "contaminated surfaces" and the lack of "social distancing." *Id.* at *3. In the class action, the district court granted the plaintiffs-petitioners' motion for preliminary injunction and the parties reached settlement. *Id.* at *5.

The district court in *Herrera* explained that "Petitioner's allegations regarding the Prison's handling of COVID-19 are duplicative of the allegations in the *Torres* Class Action, of which Petitioner is a member seeking the same relief, and thus, Petitioner is barred from raising these claims by the terms of the settlement agreement." *Id.* at *6. In addition, "[t]o the extent Petitioner seeks to enforce the provisions of the settlement agreement, he must do so through the class representative or class counsel, and not in his own, separate case." *Id.* (citing *Sykes v. Friederichs*, No. C 04-422MMCPR, 2007 WL 841789, at *6 n.12 (N.D. Cal. Mar. 20, 2007)). Accordingly, the district court dismissed

---

§ 1231(b)(1)(C)(iv), (2)(E)(vii).

the habeas claims that were based on the related class action. *See id.*

Multiple courts of appeals have upheld dismissals of cases where parallel class actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss "those portions of [the] complaint which duplicate the [class action's] allegations and prayer for relief"); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Gillespie v. Crawford,* 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class action has been certified, "[s]eparate individual suits may not be maintained for equitable relief"); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) ("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").

Petitioner's claims seeking to delay or otherwise prohibit his removal to a third country, specifically Mexico, until ICE complies with extra-statutory procedures substantially overlap with the nationwide class action, *D.V.D.* Indeed, on April 18, 2025, the court in *D.V.D.* certified, pursuant to Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

> 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) 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.

D.V.D. v. U.S. Dep't of Homeland Sec., No. CV 25-10676-BEM, 2025 WL 1142968, at *11 (D. Mass. Apr. 18, 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). Petitioner makes no mention of her class membership in her Petition or Motion.

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

The *D.V.D.* court entered a nationwide preliminary injunction requiring the DHS to comply with various procedures prior to removing a class member to a third country. The Supreme Court stayed that preliminary injunction pending the disposition of an appeal in the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). The case remains pending. As a member of the certified class, Petitioner is entitled to and bound by any relief that the *D.V.D.* court ultimately grants, including any applicable injunctive relief.

Accordingly, this Court should not entertain Petitioner's claims seeking additional procedures prior to removal to a third country because they are subsumed within the issues being actively litigated in *D.V.D.* To do otherwise would undermine what Rule 23 was intended to ensure: consistency of treatment for similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would also open the floodgates of parallel litigation in district courts all over the country which could ultimately threaten the certification of the underlying class by creating differences among the class members. Another court is already considering Petitioner's alleged constitutional right to extra-statutory procedures before removal to a third country. This Court should therefore the claims seeking such relief.

IV. THIS COURT SHOULD DENY THE HABEAS PETITION.

Respondents incorporate by reference the arguments made in its Opposition in Response to Petitioner's Request for a TRO, and reraise those arguments here. Doc. 11.

In in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court designated six

months as a presumptively reasonable period of time to allow the government to remove an alien detained under 8 U.S.C. § 1231(a)(6), but an alien is not entitled to release after six months detention. *Id.* at 701 ("This 6-month presumption, of course, *does not mean that every alien not removed must be released after six months.* To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.") (emphasis added). The passage of time alone is insufficient to establish that no substantial likelihood of removal exists in the reasonably foreseeable future. *Lema v. I.N.S.*, 214 F. Supp. 2d 1116, 1118 (W.D. Wash. 2002). In *Lema,* where the petitioner had been detained for more than a year, the district court held that the passage of time was only the first step in the analysis, and that the petitioner must then provide good reason to believe that no significant likelihood of removal exists in the reasonably foreseeable future. *Id.*

Petitioner has the burden to show that his removal is not likely in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. Only then does the burden shift to the Government to show that removal is substantially likely in the reasonably foreseeable future. *Id.* Petitioner has not met his burden to show that his removal is unlikely in the reasonably foreseeable future and, even if he could, the Government can overcome that with evidence showing that removal is likely.

To the extent the burden has shifted to the Government to show that his removal is substantially likely in the reasonably foreseeable future, Respondents are actively trying to effectuate Petitioner's removal, whether to Haiti once travel documents are received, or Mexico, if the Mexican Government chooses to accept the Petitioner, and all above processes are followed. ICE must comply with a specific process for removals to Haiti. ERO must first receive approval from the Haitian government for removal. Ex. A at ¶ 21. Additionally, there is an expectation he will be removed because ICE has been routinely obtaining approval for removal of Haitian citizens by the Haitian government and ICE routinely has flights to Haiti. *Id.* at ¶ 23. At this time though, as no TD's from Haiti have yet been issued, ERO has discretionarily chosen to inquire into third-country removal,

specifically Mexico.

Uncertainty as to Petitioner's exact removal date does not warrant his release. *See Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008) (alien detained for more than three years did not mean that removal was no longer "reasonably foreseeable"). All the above efforts also run contrary to Petitioner's assertion that Respondents are "no closer to effectuating his removal than they were on the day his removal order became final." Doc. 1 at 6. Therefore, Petitioner's continued detention is not indefinite and remains both authorized and constitutional aimed at the purpose of removing him.

V. CONCLUSION.

For the reasons set forth above, Respondents respectfully request the Emergency Motion for a Hearing on Application for a TRO be denied as it is premature, and this Court faces jurisdictional bars to issue relief. If Mexico chooses to accept Petitioner, Respondents will provide him with an opportunity to be referred to USCIS for a screening for eligibility for protection under section 251(b)(3) of the INA and CAT. Respondents also request this Court deny Petitioner's habeas petition.

Respectfully submitted on November 14, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

/s/ Lindsey E. Gilman
LINDSEY E. GILMAN
Assistant United States Attorney
Attorneys for Respondents