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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Frandy Joseph,
10 Petitioner,
11 vs.
12 David R. Rivas, Warden, et al.,
13 Respondents.
14

No. 2:25-cv-3754-PHX-DJH (CDB)

**Reply in Support of Motion for
Temporary Restraining Order**

15 Mr. Joseph is being illegally detained because respondents plan to remove him to Mexico,
16 a country of which he is neither a citizen or national and to which he has no other ties, without
17 affording him notice and an opportunity to contest removal to Mexico through the immigration
18 courts and a habeas petition. (Dkt. #1 at 7-8 ¶¶ 24-26) He has asked the Court for a temporary
19 restraining order and a preliminary injunction preventing his removal to Mexico while this Court
20 adjudicates his habeas claims. (Dkt. #3)

21 On Thursday, November 13, 2025, Mr. Joseph filed an emergency motion for a hearing
22 on his motion for a temporary restraining order. (Dkt. #21) The information that he had at the
23 time indicated that ICE was planning to remove him to Mexico at 6:00 P.M. that night, without
24 having afforded him an opportunity to contest removal to that country. And Mr. Joseph intends
25 to contest removal to Mexico on the ground that he has no ties to that country and thus would
26 face persecution or torture if removed there instead of to Haiti, the country where he was born.
27 In response to his emergency motion, the Court temporarily stayed Mr. Joseph's removal to
28

1 Mexico until his motion for a temporary restraining order could be resolved. (Dkt. #22) The
2 Court ordered the government to explain by 4:00 P.M. on Friday, November 14, why “Petitioner
3 was unable to be removed to Haiti, the specific notice provided to Petitioner of his removal to
4 Mexico, the opportunity Petitioner received to request deferral or withholding of removal, what
5 efforts Respondents undertook to evaluate Petitioner’s request if made, and the basis for
6 choosing Mexico as an alternate country of removal.” (Dkt. #22 at 2)

7 The government has not satisfactorily addressed the Court’s concerns.* The discovery
8 that respondents provided confirm that ICE has made no effort to remove Mr. Joseph to Haiti at
9 all. The discovery contains no documents that reflect any discussion with Haitian officials about
10 obtaining travel documents for Mr. Joseph, communications that respondents say would amount
11 to the first step in the process of removing him to Haiti. (Dkt. #17 at 4-5) Contrary to
12 respondents’ protestations that “removal efforts [to Haiti] remain ongoing” (Dkt. #23 at 3),
13 nothing in the discovery and nothing in the supplemental declaration of Concepcion Arredondo
14 shows that ICE has made any effort to seek the Haitian government’s approval to return Mr.
15 Joseph to Haiti. The most natural conclusion is that Mr. Joseph cannot be removed to Haiti
16 because ICE has not asked Haitian officials to accept him for removal.

17 Respondents admit that they have not yet formally notified Mr. Joseph that they are
18 planning to remove him to Mexico. (Dkt. #23 at 3) They avow that they will afford him a chance
19 to request relief from removal to Mexico *if* the Mexican government agrees to accept him, but
20 not otherwise. (Dkt. #23 at 3) But they also appear to say that, notwithstanding that avowal,
21 because of guidance regarding third-country removals issued by Respondent Noem, Mr. Joseph
22 will not be afforded a chance to request relief from removal to Mexico because he “already went
23 through the immigration courts during his removal proceedings and would have had the
24 opportunity to raise a fear claim there.” (Dkt. #23 at 6) But respondents have not explained how

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26 * Noting that its reply in support of the habeas petition is due today, respondents filed a
27 combination response to the emergency motion for a hearing and answer to the habeas petition
28 on Friday, November 14. Given the compressed briefing schedule that the Court imposed, Mr.
Joseph here addresses only the government’s response to the emergency motion.

1 Mr. Joseph's recent removal proceedings afforded him an opportunity to request relief from
2 removal to *Mexico*. The notice to appear mentioned only Haiti as his country of citizenship.
3 (DHS-320) The immigration judge ordered him removed only to Haiti, and did not order
4 removal to an alternate country. (DHS-300) The Board of Immigration Appeals discussed Mr.
5 Joseph's requests for relief from removal to Haiti. (DHS-3 to DHS-4) Nothing in the discovery
6 provided by respondents shows how Mr. Joseph's removal proceedings, as respondents initiated
7 them, afforded him any prior notice that he might be removed to Mexico, let alone gave him an
8 opportunity to request relief from removal to that country. Contrary to Respondent Noem's
9 guidance, the removal proceedings that Mr. Joseph has already had were not adequate to afford
10 him a meaningful opportunity to seek relief from removal to Mexico.

11 Unable to satisfactorily address this Court's concerns about the process afforded Mr.
12 Joseph in connection with potential removal to Haiti or Mexico, respondents pivot to challenging
13 the Court's jurisdiction to entertain Mr. Joseph's claim that his detention is illegal to the extent
14 that it is meant to facilitate his removal to Mexico. Respondents say that this claim is "barred by
15 the plain language of 8 U.S.C. § 1252(g)." (Dkt. #23 at 3) They are wrong.

16 Under § 1252(g), this Court lacks jurisdiction to "hear any cause or claim by or on behalf
17 of any alien arising from the decision or action by the Attorney General to commence
18 proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."
19 This statute accordingly deprives this Court of jurisdiction to "enjoin the government from
20 removing him." *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). At the same time, it is
21 limited only to habeas petitions involving "three discrete actions that the Attorney General may
22 take: her decision or action to *commence* proceedings, *adjudicate* cases, or *execute* removal orders."
23 *Ilyabaev v. Kane*, 847 F. Supp. 2d 1168, 1175 (D. Ariz. 2012) (quoting *Reno v. American-Arab Anti-*
24 *Discrimination Committee*, 525 U.S. 471, 482 (1999)).

25 The Ninth Circuit has held that § 1252(g) does *not* strip district courts of jurisdiction to
26 "grant writs of habeas corpus to aliens when those aliens are in custody in violation of the
27 Constitution or laws or treaties of the United States." *Magana-Pizano v. INS*, 200 F.3d 603, 609

1 (9th Cir. 1999) (citations omitted). That is what Mr. Joseph is challenging here. Mr. Joseph is
2 challenging the process used to decide whether to remove him to Mexico. This claim necessarily
3 implies the invalidity of his confinement, and thus falls “within the core of the writ of habeas
4 corpus.” *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (per curiam). This Court, as the district in
5 which Mr. Joseph was confined when he filed his petition (*see* Dkt. #23 at 2 & n.3), has
6 jurisdiction to entertain Mr. Joseph’s third-country-removal claim. *See id.* at 673–74; *see also*
7 *Johnson v. Gill*, 883 F.3d 756, 761 (9th Cir. 2018) (holding that venue was proper in the district
8 where the petitioner was confined at the time of filing the petition, even when the petitioner was
9 subsequently transferred out of that district).

10 Respondents also contend that this Court “should not entertain Petitioner’s claims
11 seeking additional procedures prior to removal to a third country because they are subsumed
12 within the issues being actively litigated” in *D.V.D. v. DHS*, No. 1:25-cv-10676 (D. Mass. filed
13 Mar. 25, 2025). (Dkt. #23 at 9) But respondents do not clearly explain how Mr. Joseph’s claim
14 that he is not being provided *any* adequate notice and an opportunity to contest removal to
15 Mexico overlap with what it says is a request for “additional, extra-statutory procedures prior to
16 removal from the United States to a third country” that are currently pending in *D.V.D.* (Dkt.
17 #23 at 6) Characterizing the claim in *D.V.D.* as asking for “additional” procedures implies that
18 the class members in *D.V.D.* have already received *some* process in connection with a third-
19 country removal. Respondents have failed to show that Mr. Joseph has received *any* adequate
20 process in connection with their attempt to remove him to Mexico. This Court can adjudicate
21 this claim.

22 Respectfully submitted:

November 17, 2025.

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