

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KATY JHORIELA PAGOAGA-
MURILLO,

Petitioner,

v.

KRISTI NOEM, ET AL,

Respondents.

CIVIL NO. 25-cv-3656-MJM

**OPPOSITION TO PETITIONER'S AMENDED
MOTION FOR TEMPORARY RESTRAINING ORDER**

Respondents, by undersigned counsel, hereby submit this Opposition to Petitioner's Amended Motion for a Temporary Restraining Order ("Petitioner's Motion"). Petitioner's Motion should be denied, first and foremost, because Petitioner has no likelihood of success on the merits of her claim that her detention and removal: (1) are arbitrary and capricious under the Administrative Procedure Act ("APA"); (2) violate the Fifth Amendment Due Process Clause; and (3) constitute cruel and unusual punishment. Moreover, the Government will suffer irreparable harm if the Motion is granted, and the balance of the equities and public interest weigh in the Government's favor. Finally, and in any event, the Court lacks jurisdiction to prevent U.S. Immigration and Customs Enforcement ("ICE") from removing Petitioner to Mexico. The Court, therefore, should deny Petitioner's Motion.

I. INTRODUCTION

Petitioner, Katy Jhoriela Pagoaga-Murillo ("Petitioner"), is a citizen and native of Honduras who entered the United States at an unknown date, time, and location without being inspected, admitted, or paroled by an Immigration Official. On July 17, 2023, United States Border

Patrol personnel encountered Petitioner in the Rio Grande Valley, Texas, Border Patrol Area of Operations. After a brief interview, it was determined that Petitioner was a non-citizen who illegally entered the United States. She was arrested and transported to the Rio Grande Valley Sector Centralized Processing Center in McAllen, Texas, for further processing. On July 21, 2025, Petitioner was granted Withholding of Removal pursuant to the United Nations Convention Against Torture (“CAT”) by the Hyattsville Immigration Court. ECF 11 at 2. On November 5, 2025, ERO Baltimore Officers arrested Petitioner at the Silver Spring Intensive Supervision Appearance Program Office due to her having a Final Order of Deportation. She was served with a notice that she was to be removed to Mexico, a third country, which is statutorily permitted under 8 U.S.C. § 1231(b)(2)(E).

In her initial Petition for Writ of Habeas Corpus, Petitioner sought habeas relief under 28 U.S.C. § 2241 (release from detention) arguing that: (1) her detention violates the Due Process Clause of the Fifth Amendment of the United States Constitution; and (2) the Court should issue a writ of mandamus pursuant to 28 U.S.C. § 1361 because ICE has a non-discretionary duty to honor the Immigration Court’s Withholding of Removal pursuant to CAT. ECF 1 at ¶¶ 22-31. After conducting a brief hearing on the Motion for a Temporary Restraining Order, the Court ordered briefing on the merits of the Petition. ECF 9.

Petitioner now seeks injunctive relief in the form of a Temporary Restraining Order precluding her removal to Mexico pursuant to the APA, the Fifth Amendment Due Process Clause, and the Eighth Amendment bar against cruel and unusual punishment.

Petitioner is unlikely to succeed on the merits of her claims because: (1) she lacks standing to bring a challenge under the APA; (2) her third country removal challenge is subject to the *D.V.D.* Supreme Court’s June 2025 stay of the *D.V.D.* preliminary injunction pending disposition of the

First Circuit Appeal, and any petition for certiorari, and complies with due process under the existing standard;¹ and (3) this Court lacks jurisdiction over the execution of final orders of removal. Petitioner's Motion, therefore, should be denied.

II. LEGAL STANDARD

The standard for issuing either a temporary restraining order or a preliminary injunction is the same; both are extraordinary remedies involving the exercise of a very far-reaching power to be granted only sparingly and in limited circumstances. *See Sarsour v. Trump*, 245 F.Supp.3d 719, 728 (E.D. Va. 2017). Petitioner must satisfy four elements to show entitlement to a preliminary injunction: first, that she is likely to succeed on the merits; second, that she will likely experience irreparable harm unless the court grants relief; third, that the balance of equities weighs in her favor; and fourth that an injunction is in the public interest. *Frazier v. Prince George's Cnty.*, 86 F.4th 537, 543 (4th Cir. 2023). The last two factors – balance of equities and the public interest – “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). A plaintiff must also show that this drastic relief is necessary “to preserve the court’s ability to render a meaningful judgment on the merits.” *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013).

¹ *See D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. April 18, 2025) (certifying class and granting preliminary injunction requiring DHS to provide notice and an opportunity to apply for protection before removing them to a third country); *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (June 23, 2025) (staying preliminary injunction pending the disposition of the First Circuit appeal and any petition for certiorari), *request for clarification granted by Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (July 3, 2025) (holding that previous order stayed the preliminary injunction in full, and district court could not enforce the injunction by issuing a remedial order).

III. ARGUMENT

A. Petitioner does not have standing to bring her APA claim.

By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Petitioner's APA claim is independently barred by this limitation.

In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of their confinement" those claims "must be brought in habeas." 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Petitioner can challenge his detention. Even if Petitioner's APA claim had merit, which it does not, the result would be the same as that in habeas – release from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

B. Respondents may remove Petitioner to Mexico.

i. Petitioner has received all process that she is entitled to under law and per the Guidance.

Plaintiff's claim that she cannot be removed to Mexico is identical to claims raised in the *D.V.D.* case, which resulted in a nationwide preliminary injunction that was stayed by the Supreme Court. This Court has previously ruled that claims related to the procedures attendant to removal to a third country are appropriately addressed in the *D.V.D.* case. *Umanzor-Chavez v. Noem*, No.

25-cv-1634-SAG, 2025 WL 2467640 at *1 (D. Md. Aug. 27, 2025) (“His issues relating to potential removal to third countries and the procedures by which the government must give notice and opportunity to seek relief from such removal will be addressed there. However, his habeas issues seeking immediate release from custody will not be addressed in the District of Massachusetts and are appropriate for resolution in this Court.”)

Petitioner is a Honduran national, subject to a final order of removal with a withholding of removal as to Honduras, and who has been notified of her imminent removal to a third country, Mexico. Petitioner attempts to evade removal currently by arguing that the Department of Homeland Security (“DHS”) third country removal policy violates the APA because it is arbitrary and capricious and that she cannot be removed to any country where she is likely to face harm. ECF 11 at 7-11. She is incorrect because her removal to Mexico is authorized pursuant to 8 U.S.C. § 1231(b)(iv) and 8 C.F.R. § 241.15.

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 the DHS Secretary 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).

On March 30, 2025, DHS Secretary Kristi Noem made explicit what was already clear from the statute and regulations when she 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 Immigration and Nationality Act (“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 for removal has been identified by DHS and the noncitizen has been informed of the intention to remove her to such third country, if the noncitizen affirmatively states a fear, U.S. Citizenship and Immigration Services (“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. 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 Immigration Judge (“IJ”), only then will USCIS refer the matter to the immigration court in the first instance.

Here, DHS, including ICE and USCIS, followed the Guidance. Mexico was identified as a third country to which Petitioner would be removed, and Petitioner was notified. Notice of Removal, attached as Ex. 1. Although Petitioner argues that Mexico is a very dangerous country where she would be vulnerable to harm, she has not yet fully availed herself of the available process. On November 14, 2025, counsel for Petitioner requested a third country screening

interview on behalf of his client concerning ICE's stated intention to remove Petitioner to Mexico.² ICE refers any third country screening to USCIS, which conducts the third country screening interview.

ii. Per the Supreme Court, the process provided to Petitioner comports with the Due Process Clause.

Lest there be any doubt about whether the Guidance and the procedures described therein and provided to Petitioner withstand legal and constitutional scrutiny, the Supreme Court resolved that doubt when it vacated a stay entered by the United States District Court for the District of Massachusetts in *Department of Homeland Security v. D.V.D.*, 145 S. Ct. 2153 (2025) (Mem.), clarified by 145 S. Ct. 2627 (2025). “[W]hen [the Supreme] Court issues a decision, it constitutes a precedent that commands respect.” *Nat’l Insts. of Health v. Am. Pub. Health Ass’n*, 606 U.S. ---, 145 S. Ct. 2658, 2263 (2005) (Mem.) (Gorsuch, J., concurring in part and dissenting in part). This includes stay decisions, which “squarely control[]” in “like cases.” *Trump v. Boyle*, 606 U.S. ---, 145 S. Ct. 2653, 2654 (2025). Petitioner’s Motion is a misguided attempt to circumvent an order from the Supreme Court in *D.V.D.* – which is plainly a “like case[]” – and impermissibly interfere with the Executive Branch’s plenary authority to conduct the nation’s relations with foreign governments.

In March 2025, three plaintiffs instituted the *D.V.D.* case in the District of Massachusetts, Case Number 1:25-cv-10676, a putative class action suit challenging the plaintiffs’ third country removals. On April 18, 2025, the United States District Court for the District of Massachusetts entered a class-wide preliminary injunction requiring, *inter alia*, written notice of the country to which ICE seeks to remove the noncitizen and an opportunity to raise a fear-based claim. It did so

² Counsel for Respondents are unaware whether Petitioner herself has requested a third country screening interview.

after finding that the Guidance was constitutionally insufficient. Specifically, the District Court found that the blanket diplomatic assurances the Guidance relies upon do not satisfy due process because they are not individualized and “offer no protection against either torture by non-state actors or chain refolement, whereby the third country proceeds to return an individual to his country of origin.” *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355, 390 (D. Mass) (citing Plaintiffs’ complaint discussing chain refolement). The Court also held that the Guidance was insufficient because it did not provide sufficient notice and opportunity for class members to be heard regarding any fear of return to the third country. *Id.* Specifically, it provided:

Following notice [or removal to a third country], the individual must be given a meaningful opportunity, and a minimum of ten days, to raise a fear-based claim for [CAT] protection prior to removal. See id. If the non-citizen demonstrates “reasonable fear” of removal to the third country, Defendants must move to reopen the non-citizen’s immigration proceedings. Id. If the non-citizen is not found to have demonstrated a “reasonable fear” of removal to the third country, Defendants must provide a meaningful opportunity, and a minimum of fifteen days, for the non-citizen to seek reopening of their immigration proceedings.

Id. (emphasis added).

The Government appealed and sought a stay of the preliminary injunction before the United States Court of Appeals for the First Circuit. After the First Circuit denied the Government’s request for a stay, the Government applied for a stay of the preliminary injunction in the Supreme Court. In its application, the Government argued, among other things, that the Guidance comported with the Constitution’s due process requirements.

It is undisputed that Petitioner is a *D.V.D.* class member. On June 23, 2025, the Supreme Court granted the requested stay its entirety as to both the named Plaintiffs and the certified mandatory class. *Dep’t of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025) (Mem.). That same day, despite the Supreme Court’s stay, the District of Massachusetts nonetheless purported to

enforce its since-stayed injunction as to eight class members in DHS custody by ordering the Government to carry out the very procedures the Supreme Court found the District Court was precluded from requiring (third country screening interview and IJ review of negative fear finding). The Government immediately moved to clarify the Supreme Court's stay.

On July 3, 2025, the Supreme Court granted the Government's motion and clarified its stay. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627 (2025). The Supreme Court held that its "June 23 order stayed the April 18 preliminary injunction in full" and therefore *the District Court could not "enforce an injunction that [its] stay rendered unenforceable."* *Id.* at 2629 (emphasis added).

All arguments Petitioner makes in her Motion have been reviewed, and rejected, by the Supreme Court by virtue of their membership in the certified Rule 23(b)(2) class in *D.V.D.* Counsel for the nationwide class in both their opposition to the Government's application for a stay of the preliminary injunction and motion for clarification raised the arguments Petitioner makes here. *See generally DHS v. D.V.D.*, No. 24A1153, Opposition to Application to Stay ("Stay Opp'n") (June 4, 2025); *DHS v. D.V.D.*, No. 24A1153 Opposition to Motion for Clarification ("Clarification Opp'n") (June 24, 2025). Most notably, they argued that the procedures provided by the Guidance were insufficient under the Fifth Amendment Due Process Clause. Stay Opp'n at 33-36. They also objected to the Government's claims of irreparable harm and mounted numerous arguments about the harm that would befall their class members who, at the time of briefing, included eight aliens who the Government intended to send to South Sudan and who class counsel cited news articles they claimed demonstrated these eight aliens would be returned to their countries of origin. Stay Opp'n at 36-40; Clarification Opp'n at 3-5. Despite all these arguments, the Supreme Court sided with the Government – *twice*.

Moreover, the Supreme Court, by granting the stay, necessarily concluded that the balance of equities and public interest tipped in the Government's favor. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (setting the standard for an appellate stay). The Government argued that it was suffering an "ongoing irreparable injuring in the diplomatic, immigration, and foreign policy spheres." Application for a Stay, *Dep't of Homeland Sec. v. D.V.D.*, No. 24A1153 (U.S.S.C. May 2, 2025). The Government explained that "[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 irreparable harm to U.S. foreign policy." *Id.* at 8. It is indisputable that, regardless of the Supreme Court's opinion on the merits arguments, it found that this irreparable harm justified the granting of a stay.

C. This Court lacks jurisdiction to consider Petitioner's claims.

Even if Petitioner was not a member of the mandatory *D.V.D.* class, numerous sections of the INA preclude this Court from issuing the relief Petitioner seeks.

First, this Court would lack jurisdiction under 8 U.S.C. § 1252(g) to review Petitioner's claim because her claim arises from the execution of her removal order. Section 1252(g), as amended by the REAL ID Act, bars claims arising from three discrete actions, including, as relevant here, the decision or action to "execute removal orders." *Id.* In enacting § 1252(g), Congress spoke clearly, providing 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. *Id.*; *accord*, *Elgharib v. Napolitano*, 600 F.3d 597, 605 (6th Cir. 2010) (holding that Section 1252(g) precludes jurisdiction under the All Writs Act); *Sadhvani v. Chertoff*, 460 F.Supp.2d 114, 122 (D.D.C. 2006)

(same). Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 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); *see also Singh v. Napolitano*, 500 F. App’x 50, 52 (2d Cir. 2012) (holding that attempt to “employ[] a habeas petition effectively to challenge the validity and execution of [a] removal order,” even “indirectly,” is “jurisdictionally barred”). The decision to execute a removal order is committed to the discretion of the Executive Branch, and Section 1252(g) was designed to protect that discretion and to avoid the “deconstruction, fragmentation, and hence prolongation of removal proceedings.” *AADC*, 525 U.S. at 487.

Section 1252(g) also applies to constitutional claims arising from the execution of a final order of removal, as the language barring “any cause or claim” made it “unnecessary for Congress to enumerate every possible cause or claim[.]” *Id.* at 487; *accord Silva v. United States*, 866 F.3d 938, 940-41 (8th Cir. 2017). Further, *AADC* established that Section 1252(g) is “designed to give some measure of protection to ‘no deferred action’ decisions and similar discretionary determinations, providing that if they are reviewable at all, they at least will not be made the bases for separate rounds of judicial intervention outside the streamlined process that Congress has designed.” *Alvarez v. ICE*, 818 F.3d 1194, 1205 (11th Cir. 2016) (quoting *AADC*, 525 U.S. at 485). Section 1252(g) therefore precludes “[e]fforts to challenge the refusal to exercise [favorable] discretion on behalf of specific aliens[.]” *Id.* (quoting *AADC*, 525 U.S. at 485).

In the case here, Section’s 1252(g)’s prohibition is pronounced. Petitioner’s case arises from the execution of her final orders of removal and her notice that such removal would be to Mexico in light of her order of withholding as to Honduras. It, therefore, is clear that Petitioner’s

claims fall outside this Court's control and, therefore, the Court should dismiss this case and deny Petitioner's Motion.

Second, claims are barred in district courts by Section 1252(a)(5) and (b)(9). By law, “the sole and exclusive means for judicial review of an order of removal” is a “petition for review filed with an appropriate court of appeals,” that is, “the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.” 8 U.S.C. §§ 1252(a)(5), (b)(2). This explicitly excludes “section 2241 of title 28, or any other habeas corpus provision.” 8 U.S.C. § 1252(a)(5). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of *all* [claims arising from deportation proceedings]” to a court of appeals in the first instance. *AADC*, 525 U.S. at 483. “Taken together, §§ 1252(a)(5) and [(b)(9)] mean that *any* issue— whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). Section 1252(b)(9) thus eliminates this Court's jurisdiction over Petitioner's claims by channeling “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien” to the courts of appeals. Accordingly, this Court lacks jurisdiction under Sections 1252(a)(5) and (b)(9) to review Petitioner's request enjoin her removal from the United States to Mexico. *See J.E.F.M.*, 837 F.3d at 1031; *see also, Mata v. DHS*, 426 F. App'x 698, 700 (11th Cir. 2011); *Canal A Media Holding, LLC v. USCIS*, 964 F.3d 1250, 1257-58. (11th Cir. 2020); *Camarena v. ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021); *Linares v. DHS*, 529 F. App'x 983 (11th Cir. 2013); *Themeus v. DOJ*, 643 F. App'x 830 (11th Cir. 2016).

Third, the Foreign Affairs Reform and Restructuring Act of 1998 (“FARRA”) and 8 U.S.C. § 1252(a)(4) also preclude this Court from issuing the requested relief. The CAT is not self-

executing. *See Medellin v. Texas*, 552 U.S. 491, 505, 520 (2008); *Saint Fort v. Ashcroft*, 329 F.3d 191, 202 (1st Cir. 2003). Rather, it is only operative domestically insofar as Congress implements it by statute. Congress, in its discretion, implemented it by directing the issuance of regulations, expressly depriving courts of jurisdiction to review those regulations, and channeling all review of individual CAT claims into review of final orders of removal. FARRA § 2242(d); *see also* 8 U.S.C. § 1252(a)(4) (explaining that “a petition for review” is the “sole and exclusive means for judicial review of any cause or claim under the [CAT]”).

IV. CONCLUSION

For the foregoing reasons, Petitioner’s Amended Motion should be denied.

Dated: November 18, 2025

Respectfully submitted,

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