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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Luis Valladares Arenas, Petitioner, v. Pamela Bondi, et al., Respondents.	No. CV-25-04413-PHX-DWL (JZB) **RESPONSE TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION.

Respondents Pamela Bondi, Attorney General of the United States; Kristi Noem, Secretary of the U.S. Department of Homeland Security ("DHS"); Todd M. Lyons, Acting Director of U.S. Immigration and Customs Enforcement ("ICE"); and Christopher D. McGregor, Acting Field Office Direction of ICE Enforcement and Removal Operations, Phoenix ("Respondents"), by and through undersigned counsel, hereby respond to the Petition for Writ of Habeas Corpus (Doc. 1) and to Petitioner's Motion for Temporary Restraining Order (Doc. 5) consistent with this Court's Order (Doc. 6).

Petitioner is a violent criminal offender convicted of numerous serious offenses to include kidnapping, burglary, theft, and various weapons related offenses. He has continued to commit additional criminal offenses each time he is released from immigration custody. An immigration judge has issued a final and executable removal order to Cuba. The

Government maintains a strong public interest in executing his final removal order to Cuba. The Government is currently pursuing removal to Cuba only.

Although it is unclear from the petition whether Petitioner challenges his detention as unconstitutionally prolonged under *Zadvydas*, Petitioner has been detained for less than three weeks— notably less than the six-month presumptively reasonable time-period to effectuate removal established by the Supreme Court in *Zadvydas*. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). To the extent Petitioner claims his detention is unconstitutionally indefinite under *Zadvydas*, such a claim is premature at this point and must fail as a matter of law. *Id.* Further, ICE has drafted and is in the process of reviewing the notice of revocation of Petitioner's order of supervision and will serve it on Petitioner as soon as it is reviewed and promptly grant him an informal interview. The regulation governing revocation of an order of supervision in this context is 8 C.F.R. § 241.13(i)(3). This regulation indicates that the Government must "promptly" serve Petitioner with a notice of revocation of release and conduct an informal interview, but it does not provide for a mandatory time frame when this shall occur. Because this regulatory process is being followed and will be completed soon, the Court should not order Petitioner released.

Finally, the Government is not currently pursuing Petitioner's removal to any country other than Cuba. In any event, the Court lacks jurisdiction to enjoin third country removal under 8 U.S.C. § 1252(g) and any relief related to third country removal to which Petitioner is entitled to must be pursued within the *D.V.D.* class action. For all these reasons, argued in full below, the Court should deny the habeas petition and motion for injunctive relief.

II. FACTUAL BACKGROUND.

Petitioner is a native and citizen of Cuba. Exhibit A, Declaration of Kevin Bourne, ¶ 4. Petitioner entered the United States at or near Nogales, Arizona on July 28, 2003. *Id.* at ¶ 5. After being arrested shortly after entry, United States Customs and Border Protection ("CBP") granted Petitioner a voluntary return and saw him return to Mexico. *Id.* Petitioner re-entered the United States at an unknown time and location. *Id.* at ¶ 6. On March 28, 2007, Petitioner was arrested for Failing to Show a Driver's License or Identification to a Law

Enforcement Officer. *Id.* at ¶ 7. This charge was la ter dismissed. *Id.* On March 30, 2007, ICE witnessed the Petitioner voluntarily return to Mexico. *Id.* at ¶ 8.

Petitioner again re-entered the United States at an unknown time and unknown location prior to his arrest of February 12, 2013, for Misconduct Involving Weapons. *Id.* at ¶ 9-10. On February 22, 2013, Petitioner was arrested for Theft – Means of Transportation and Kidnapping. *Id.* at ¶ 11. He was convicted of the kidnapping charge on June 5, 2013, and sentenced to three-and-a-half years incarceration. *Id.* at ¶ 11-12. On June 14, 2013, he was issued a Notice to Appear ("NTA") charging him as removable under section 212(a)(6)(A)(i)(I) of the Immigration and Nationality Act ("INA") alleging he was an alien present in the United States without being admitted or paroled, and 212(a)(2)(A)(i)(I) alleging Petitioner is an alien who has been convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime. *Id.* at ¶ 13.

After Petitioner was taken into ICE custody on February 22, 2016, ICE subsequently re-issued the Petitioner an NTA solely charging him with removability under INA § 212(a)(6)(A)(i). *Id.* at ¶ 15. On April 19, 2016, Petitioner had a hearing before an immigration judge and was ordered removed to Cuba. *Id.* at ¶ 17. At the conclusion of the hearing, Petitioner waived his right to appeal the decision. *Id.* On May 18, 2016, ICE issued the Petitioner an Order of Supervision, releasing him from ICE custody. *Id.* at ¶ 19. Following his release, on April 26, 2017, Petitioner was arrested for First Degree Burglary, Possession of a Weapon by a Prohibited Person, and three counts of Theft of Means of Transportation. *Id.* at ¶ 20. Petitioner was transferred from criminal custody to ICE on May 4, 2017, and again released on an Order of Supervision. *Id.* at ¶ 21.

After release, Petitioner again reoffended and on February 23, 2018, was convicted of Dangerous Drug Possession or Use and sentenced to three years' probation. *Id.* at ¶ 23. On the same day, he was also convicted of one count of Theft of Means of Transportation. *Id.* at ¶ 24. Petitioner was encountered by CBP agents on August 26, 2017, and transported for processing as a final order of removal. *Id.* at ¶ 25. Petitioner was released on an Order of

Supervision on September 1, 2017, and was arrested by local police on September 13, 2017. *Id.* at ¶ 28-29. On October 17, 2017, Petitioner was arrested for Possession of a Weapon by a Prohibited Person, Drug Paraphernalia Possession or Use, Theft of Means of Transportation, Unlawful Flight from a Law Enforcement Officer, and Third-Degree Burglary, among other charges. *Id.* at ¶ 30. After conviction for two counts of Theft of Means of Transportation and one count of Weapon Possession by a Prohibited Person, Petitioner was sentenced to one hundred thirty-four days incarceration. *Id.* at ¶ 32. After multiple further arrests by law enforcement, ICE took custody of Petitioner on November 20, 2025. *Id.* at ¶ 45. On December 5, 2025, an Order of Supervision Notice of Revocation of Release was forwarded to the Assistant Field Office Director in Florence, Arizona, for review. *Id.* at ¶ 49.

II. LEGAL FRAMEWORK FOR TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS.

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* "'[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.'" *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129-130 (2d ed. 1995) (emphasis in original). To obtain a preliminary injunction, the moving party must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). To show harm, a movant must allege that concrete, imminent harm is likely

with particularized facts. *Winter*, 555 U.S. at 22. An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Where the government is a party, courts merge the analysis of the final two *Winter* factors: the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is a "heavy" one. *Id.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

III. PETITIONER IS CONSTITUTIONALLY DETAINED.

A. Petitioner's detention is statutorily authorized and constitutional under *Zadvydas;* he is not entitled to release.

An alien who is ordered removed must be detained for 90 days once their removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B)(i), (a)(2)(A). If the alien has not left the United States voluntarily or been removed during this 90-day period, the alien will generally be granted supervised release. 8 U.S.C. § 1231(a)(3). The INA does not authorize indefinite detention. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). An alien may be detained for up to six months pursuant to a final order of removal, after which, the alien may be released if they can "provide[] good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" and the Government fails to show otherwise. *Id.* at 701. At this time, an alien is not presumed to be entitled to release; the alien must show that their detention is "indefinite—i.e., that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Diouf v. Mukasey*, 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701) (internal quotation marks removed). This six-month period includes the initial 90-day mandatory detention period and three months thereafter. *Ma v. Ashcroft*, 257 F.3d 1095, 1102 n.5 (9th Cir. 2001).

Petitioner's removal order became administratively final on April 19, 2016. Exhibit A at ¶ 17. Petitioner was only held at that time for less than thirty days. *Id.* at ¶ 19. Petitioner was most recently re-detained by ICE on November 20, 2025. *Id.* at ¶ 45. Petitioner cannot state a viable claim for unconstitutionally indefinite detention under *Zadvydas* because he has been detained less than three weeks.

Further, even if Petitioner's *Zadvydas* claim were ripe—which it is not—Petitioner may only be granted release from detention if he can show "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. Courts have held that Petitioners have met this bar when no country would agree to accept the alien or when the alien's home country had no repatriation treaty with the United States, *id.* at 686, when the government "concede[d] that it [was] no longer even involved in repatriation negotiations" with the alien's home country, *Clark v. Suarez*

Martinez, 543 U.S. 371, 386 (2005), and when the alien had been detained for five years and had "won relief at every administrative level." *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006). The Supreme Court clarified that its holding in *Zadvydas* was concerned with detention that is "indefinite and potentially permanent," and for aliens whose removal is "no longer practically attainable." *See Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (internal quotations omitted). The mere fact that an alien's detention "lacks a certain end date" does not render their detention unlawfully indefinite. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1063 (9th Cir. 2008).

Here, Petitioner's removal is practically attainable, and his detention is not "potentially permanent." *Demore*, 538 U.S. at 528. He is constitutionally detained and any request for release under *Zadvydas* should be denied. *See Zadvydas*, 533 U.S. at 700–01.

B. ICE is in the process of complying with the pertinent regulations concerning revocation of Petitioner's Order of Supervision.

ICE's regulations permit it to revoke an order of supervision and detain the alien released under it if it "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). If an alien's order of supervision is revoked for this reason, ICE must notify the alien "of the reasons for revocation" and "conduct an initial informal interview promptly after [the alien's] return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.13(i)(3).

On December 5, 2025, an Order of Supervision Notice of Revocation of Release was prepared by ICE and sent to the Assistant Field Office Director for review. Therefore, ICE is in the process of providing Petitioner with a Notice of Revocation of Release and an informal interview will follow. Ex. A at ¶ 49. Courts have held that an interview held within a month was "prompt" according to 8 C.F.R. § 241.13(i)(3). *See, e.g.*, *Roe v. Oddo*, 2025 U.S. Dist. LEXIS 130489 (W.D. Penn. July 9, 2025), at *6, 20–21 (detention in "early May," interview granted on June 6 of the same year).

ICE is complying with the relevant regulatory procedures established for revoking an order of supervision by providing Petitioner with notice that his order of supervision was being revoked and the grounds on which it was being revoked, and it will promptly grant

him a "brief informal interview" to follow which will allow Petitioner the opportunity to contest those grounds. The habeas petition should be denied.

III. THE COURT LACKS JURISDICTION TO ENJOIN 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.

The habeas petition and motion for injunctive relief seek an order enjoining Petitioner's removal to any third country outside the United States, that is not Cuba, pending the completion of extra-statutory procedures to remove him. As stated, the Government is not currently seeking to remove Petitioner to any other country than Cuba. To the extent it seeks third country removal, the Government will comply with this Court's order to inform the Court at least three business days prior to any intended third-country removal. Nevertheless, Petitioner's request that the Court enjoin any execution of his final removal order to a third country 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. *See* 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 claims arise from his concerns about the execution of his removal order and his detention pending execution of his removal order to a third country. The Petition seeks, in part, to require ICE to provide him with additional procedures prior to his removal to a third country. However, 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 challenges to the Government's ability to execute a valid final removal order are squarely prohibited by 8 U.S.C. § 1252(g).

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

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

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

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

Any judicial review of any claim arising under CAT is available exclusively on an individualized basis "as part of the review of a final order of removal" in the courts of appeals. *See* 8 U.S.C. § 1252(a)(4); *see also* FARRA § 2242(d), 112 Stat. 2681-822 (same for "any other determination made with respect to the application of [CAT]"); *cf. Nasrallah*, 590 U.S. at 580 (discussing FARRA). Under FARRA, "no court"—and certainly not a district court—has jurisdiction to review DHS's implementation of CAT. Yet that is precisely what Petitioner seeks here by asking the Court to order ICE to comply with additional procedures so that Petitioner may seek relied under CAT to a third country.

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

C. Petitioner is a D.V.D. class member, so his duplicative claims are foreclosed by the parallel case.

This Court should dismiss Petitioner's claims seeking additional, extra-statutory procedures prior to removal from the United States to a third country, because those claims are already being adjudicated in the nationwide *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 recently 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 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.

See 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 his class membership in the petition or motion for injunctive relief.

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 dismiss his claims seeking additional procedures prior to his 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. PETITIONER IS NOT ENTITLED TO INJUNCTIVE RELIEF.

A. Petitioner is not likely to succeed on the merits.

Petitioner requests that this Court order his immediate release. As argued in Section III above, Petitioner's habeas claim should not be granted. For these same reasons, Petitioner cannot show that he is "likely to succeed on the merits," as is required for injunctive relief. *Winter*, 555 U.S. at 20. Thus, this Court should issue neither a temporary restraining order nor a preliminary injunction.

B. Petitioner cannot establish irreparable harm.

The Court should deny Petitioner's Motion, because Petitioner "must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine Servs. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). The "possibility" of injury is "too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief." *Id.* "Subjective apprehensions and unsupported predictions . . . are not sufficient to satisfy a plaintiff's burden of demonstrating an immediate threat of irreparable harm." *Id.* at 675-76.

Petitioner cannot show that denying the temporary restraining order would make "irreparable harm" the likely outcome. *Winter*, 555 U.S. at 22 ("[P]laintiffs . . . [must] demonstrate that irreparable injury is likely in the absence of an injunction.") (emphasis in

original). "[A] preliminary injunction will not be issued simply to prevent the possibility of some remote future injury." *Id.* "Speculative injury does not constitute irreparable injury." *Goldie's Bookstore, Inc. v. Superior Court of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984). Petitioner cannot establish irreparable harm if he is not released from detention where he is lawfully and constitutionally detained pursuant to a final executable removal order.

C. The equities and public interest do not favor Petitioner.

The third and fourth factors, "harm to the opposing party" and the "public interest," "merge when the Government is the opposing party." *Nken*, 556 U.S. at 435. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982).

An adverse decision here would negatively impact the public interest by jeopardizing "the orderly and efficient administration of this country's immigration laws." *See Sasso v. Milhollan*, 735 F. Supp. 1045, 1049 (S.D. Fla. 1990); *see also Coal. for Econ. Equity v. Wilson*, 122 F.3d 718, 719 (9th Cir. 1997) ("[I]t is clear that a state suffers irreparable injury whenever an enactment of its people or their representatives is enjoined."). The public has a legitimate interest in the government's enforcement of its laws. *See, e.g., Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1140 (9th Cir. 2009) ("[T]he district court should give due weight to the serious consideration of the public interest in this case that has already been undertaken by the responsible state officials in Washington, who unanimously passed the rules that are the subject of this appeal.").

While it is in the public interest to protect constitutional rights, if the petitioner has not shown a likelihood of success on the merits of that claim—as Petitioner has not shown here—that presumptive public interest evaporates. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). And the public interest lies in the Executive's ability to enforce U.S. immigration laws. *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991) ("Control over immigration is a sovereign prerogative."). Given Petitioner's lengthy criminal history, including kidnapping, dangerous drug possession, theft of means of transportation, and weapon's charges, the public and governmental interest

in permitting his continued detention to effectuate removal is significant. Because Petitioner is a convicted criminal subject to a final removal order, the public interest lies with the government's ability to effectuate his removal to Cuba.

For the foregoing reasons, Respondents respectfully request that this Court deny the Motion for a Writ of Habeas Corpus (Doc. 1) and the Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 5).

Respectfully submitted this 9th day of December, 2025.

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