IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JOSE POLANCO PENALVER,	:	
	:	
Petitioner,	:	
	:	Case No. 4:25-CV-457-CDL-AGH
v.	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S RESPONSE TO PETITION

On December 10, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition"). ECF No. 1. Petitioner claims his detention has become prolonged and that he will not be removed in the reasonably foreseeable future. *Id.* He also claims he has not been provided with notice and opportunity to be heard to contest his removal to a third country. *Id.* On December 15, 2025, the Court ordered Respondent to respond to the Petition within twenty-one days. ECF No. 6. For the reasons explained below, the Petition should be dismissed or, alternatively, denied.

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents in his Petition. "[T]he default rule [for claims under 28 U.S.C. § 2241] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

BACKGROUND

Petitioner is a native and citizen of Cuba. Declaration of Deportation Officer David L. Graumenz ¶ 4. On January 29, 2006, Petitioner was paroled into the United States at or near Miami, Florida, until October 3, 2007, when he adjusted status to a Lawful Permanent Resident ("LPR") pursuant to the Cuban Refugee Adjustment Act. *Id.* On March 22, 2018, the Petitioner entered a guilty plea to Alien Harboring for Financial Gain and Conspiracy to Commit Marriage Fraud in the United States District Court, Northern District of Georgia, Atlanta Division. *Id.* ¶ 5 & Ex. A. He was sentenced to serve twelve months and one day on each count to run concurrently. *Id.*

On February 22, 2019, Petitioner was served with a Notice to Appear ("NTA") that charged him with being removable pursuant to 237(a)(2)(A)(iii) of the Immigration and Nationality Act ("INA"). *Id.* ¶ 6 & Ex. B. On or about March 18, 2019, Petitioner was released from Bureau of Prisons custody and entered ICE custody. *Id.* ¶ 7. He was transported to Folkston ICE Processing Center in Folkston, Georgia. *Id.* On April 4, 2019, Petitioner appeared, pro se, for his master hearing. *Id.* ¶ 8. On this day, he admitted and conceded to the allegations listed on the NTA and confirmed he did not want to apply for relief from removal proceedings and would accept a removal order instead. *Id.* The Immigration Judge therefore entered an order of removal to Cuba. *Id.* & Ex. C. Petitioner did not appeal. *Id.* On or about July 3, 2019, Petitioner was released from ICE custody pursuant to an Order of Supervision ("OSUP") based on ICE/ERO's determination that there was no significant likelihood of removal in the reasonably foreseeable future to Cuba for Petitioner at that time. *Id.* ¶ 9. Petitioner was required to periodically report to

ICE as part of his release conditions. *Id.*

On November 24, 2025, Petitioner was arrested by ICE while reporting. *Id.* ¶ 10. He was ultimately transported to Stewart Detention Center in Lumpkin, Georgia. *Id.* On the same day, Petitioner was served with an OSUP revocation notice. *Id.* & Ex. D. On or about December 29, 2025, Petitioner was served with a Third Country Removal Notice, and ICE/ERO confirmed that Petitioner was ready for removal to Mexico. *Id.* ¶ 11 & Ex. E. ICE/ERO is currently awaiting bedspace at a facility in Texas, where Petitioner will be housed while being vetted by the Mexican consulate for removal to Mexico. *Id.* Petitioner remains detained at Stewart Detention Center pursuant to INA § 241(a). *Id.* ¶ 12.

LEGAL FRAMEWORK

I. Post-Final Order Detention and *Zadvydas*

Since Petitioner is detained post-final order of removal, his detention is governed by 8 U.S.C. § 1231. Congress provided in 8 U.S.C. § 1231(a)(1) that ICE/ERO shall remove an alien within ninety (90) days of the latest of: (1) the date the order of removal becomes administratively final; (2) if a removal is stayed pending judicial review of the removal order, the date of the reviewing court's final order; or (3) the date the alien is released from criminal confinement. *See* 8 U.S.C. §§ 1231(a)(1)(A)-(B). During this ninety-day time frame, known as the "removal period," detention is mandatory. *See id.* at § 1231(a)(2).

If ICE/ERO does not remove an alien within ninety days, detention may continue if it is "reasonably necessary" to effectuate removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); 8 U.S.C. § 1231(a)(6) (providing that an alien who is subject to mandatory detention, inadmissible, or who has been determined to be a risk to the community or a

flight risk, "may be detained beyond the removal period"). In *Zadvydas*, the Supreme Court determined that, under the Fifth Amendment, detention for six months is presumptively reasonable. 533 U.S. at 700. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701 (emphasis added); *see also* 8 C.F.R. § 241.13. Where there is no significant likelihood of removal in the reasonably foreseeable future, the alien should be released from confinement. *Id.*

In *Akinwale v. Ashcroft*, 287 F.3d 1050 (11th Cir. 2002), the Eleventh Circuit further elaborated on the framework announced by the Supreme Court in *Zadvydas*, stating that "in order to state a claim under *Zadvydas* the alien not only must show post-removal order detention in excess of six months but also must provide evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." 287 F.3d at 1052 (emphasis added). Thus, the burden is on Petitioner to demonstrate: (1) post-removal order detention lasting more than six months; and (2) evidence of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. *Gozo v. Napolitano*, 309 F. App'x 344, 346 (11th Cir. 2009) (per curiam) (quoting *Akinwale*, 287 F.3d at 1051-52).

II. Third Country Removals

The INA provides the Executive Branch with the authority to execute orders of removal and to ensure that aliens who have been ordered removed are in fact removed from the United States. This authority is broad. The United States may remove aliens to

various countries including, where other options are unavailable, to any country willing and able to accept them. *See* 8 U.S.C. § 1231(b). Of course, under the statute and regulations implementing the Convention Against Torture ("CAT"), the United States will not remove any alien to a country where the United States has found he is likely to be tortured—*i.e.*, the extreme scenario where the alien is likely to face severe pain or suffering intentionally inflicted by the hand or with the consent of the public official. The standard for "torture" is a high bar and is plainly not easily met.

Although the INA authorizes removal of aliens who have received a final order of removal to a third country (*see*, 8 U.S.C. § 1231(b)(1)(E)), it does not provide any additional, specific process that aliens must receive under CAT after a final order of removal has been issued but prior to removal to a third country. Congress has delegated the decision regarding the appropriate process entirely to the Executive Branch. *See* 8 U.S.C. § 1231 note. On March 30, 2025, the Department of Homeland Security ("DHS") issued guidance detailing its policy in this context, following Executive Order 14165 regarding removal of aliens subject to final orders of removal. *See* March 30, 2025 Guidance, Executive Order 14165, 90 Fed. Reg. 8467.

The DHS Guidance establishes a two-track system to address aliens who have been ordered removed but for various reasons cannot be sent to a country specifically designated in their removal orders. First, where the United States has received a sufficient assurance from a third country that no aliens will be tortured upon removal there, the Executive may remove the alien to that country without any further process. A section applies for countries where the United States has not received such an assurance. In that

case, the DHS policy provides that the alien is entitled to notice of the third county and an opportunity for a prompt screening of any asserted fear of being tortured there.

ARGUMENT

Although the Petition contains four separate counts, Petitioner asserts two main arguments: (1) that his detention violates due process under *Zadvydas* because he allegedly cannot be removed to Cuba, and (2) that Respondent's failure to provide him with notice to contest his removal to a third country violates his due process rights. Pet. 5-7.[2] The Petition should be dismissed for lack of jurisdiction or, alternatively, denied on the merits.

I. The Petition is premature under *Zadvydas*.

In evaluating *Zadvydas* claims, the Eleventh Circuit has made clear that the "six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*." *Akinwale*, 287 F.3d at 1052; *see also Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 833 (11th Cir. 2016); *Guo Xing Song v. U.S. Att'y Gen.*, 516 F. App'x 894, 899 (11th Cir. 2013).

Here, the IJ ordered Petitioner removed on April 4, 2019, and Petitioner waived appeal. Graumenz Decl. ¶ 8 & Ex. C. Therefore, his removal order became final on that day. *Id.* Petitioner was released from ICE custody on July 3, 2019, approximately three months later, based on ICE/ERO's finding that there was no significant likelihood of

[2] The Petition references the alleged revocation of Petitioner's order of supervision, but he does not include this occurrence as a distinct basis for relief anywhere in Counts One through Four. To the extent the Court construes the Petition as asserting such a claim, Respondent respectfully requests an opportunity to respond.

removal to Cuba in the reasonably foreseeable future. *Id.* ¶ 9. On November 24, 2025, Petitioner re-entered ICE/ERO custody. *Id.* ¶ 10 & Ex. D. Petitioner filed his petition on December 10, 2025, less than one month after he was re-detained. ECF No. 1. Thus, at the time the Petition was filed, Petitioner had been detained for less than three weeks, or less than four months if the Court were to include the previous period of detention (which it should not)[3], and therefore the *Zadvydas* six-month presumptively reasonable detention period had not expired at the time he filed his Petition. Thus, Petitioner cannot state a claim under *Zadvydas* because his detention is presumptively reasonable. *Akinwale*, 287 F.3d at 1052.

Courts throughout the Eleventh Circuit—including this Court—have dismissed non-citizens' habeas petitions raising *Zadvydas* claims where the presumptively reasonable six-month period had not expired when they filed their petitions. *S.H. v. Warden, Stewart Det. Ctr.*, No. 4:21-CV-185-CDL-MSH, 2022 WL 1280989, at *2 (M.D. Ga. Feb. 15, 2022), *recommendation adopted*, 2022 WL 1274385 (M.D. Ga. Apr. 28, 2022); *Singh v. Garland*, No. 3:20-cv-899, 2021 WL 1516066, at *2 (M.D. Fla. Apr. 16, 2021); *Elienist v. Mickelson*, No. 15-61701-Civ, 2015 WL 5316484, at *3 (S.D. Fla. Aug. 18, 2015), *recommendation adopted*, 2015 WL 5308882 (S.D. Fla. Sept. 11, 2015); *Maraj v. Dep't of Homeland Sec.*, No. CA 06-0580-CG-C, 2007 WL 748657, at *3 (S.D. Ala. Mar. 7, 2007); *Fahim*

[3] Petitioner vaguely argues that the "180-day detention period ended years ago" based on a case incorrectly attributed to the Eleventh Circuit. Pet. 1. Respondent notes that this Court has previously ruled on multiple occasions that prior periods of detention should not be counted toward the determination of the six-month detention period. *See, e.g., M.K. v. Warden, Stewart Det. Ctr.*, No. 4:23-cv-136, ECF No. 12 (M.D. Ga. Oct. 19, 2023). Thus, the Petition is approximately five months premature under that framework.

v. Ashcroft, 227 F. Supp. 2d 1359, 1363-65 (N.D. Ga. 2002). The Court should similarly dismiss the Petition here.

II. Petitioner's *Zadvydas* claim lacks merit.

Even if the Court finds that the Petition is not premature—which it is for the reasons set forth above—Petitioner has nevertheless failed to carry his evidentiary burden of demonstrating that there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 701. To satisfy his burden, Petitioner must provide "*evidence* of a good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *Akinwale*, 287 F.3d at 1052 (emphasis added). Petitioner has failed to make this showing.

Petitioner attempts to show that there is no significant likelihood of removal in the reasonably foreseeable future by stating that he "knows for sure that Cuba will deny and has denied any and all request for travel documents," despite his cooperation. Pet. 4. This is insufficient to carry his burden because ICE/ERO is within its statutory authority to remove Petitioner to a third country, here, Mexico, and Petitioner has made no showing that his removal to Mexico is not significantly likely to occur in the reasonably foreseeable future. *See* 8 U.S.C. § 1231(b). To the extent Petitioner alleges ICE/ERO will not be able to remove him specifically, this amounts to nothing more than a conclusory statement which is insufficient to state a claim of unlawful detention under *Zadvydas*. *See Rosales-Rubio v. Attorney Gen.*, No. 4:17-CV-83-CDL-MSH, 2018 WL 493295, at *3 (M.D. Ga. Jan. 19, 2018). For these reasons, Petitioner fails to meet his burden under *Zadvydas*.

Even if Petitioner had offered evidence sufficient to shift the burden to Respondent to show a likelihood of removal, Respondent has easily met his burden. Petitioner was notified on December 29, 2025, that ICE/ERO intends to remove him to Mexico. Graumenz Decl. ¶ 11 & Ex. E. ICE/ERO has further confirmed that plans are in place for Petitioner's removal to Mexico. *Id.* ICE/ERO is currently awaiting bedspace at a facility in Texas where Petitioner will be housed while being vetted by the Mexican consulate for removal to Mexico. *Id.* Accordingly, the evidence supports a conclusion that there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future, and the Petition should therefore be dismissed because Petitioner's *Zadvydas* claim fails on the merits.

III. Petitioner's claims concerning third country removal lack merit.

a. Petitioner's third country removal claim is moot.

Petitioner claims in his Petition that he has not received notice or an opportunity to be heard to contest his removal to a third country. Pet. 7. But he's wrong. Petitioner was provided with the sought-after notice on December 29, 2025. Graumenz Decl. ¶ 11. "Article III of the Constitution limits the jurisdiction of the federal courts to the consideration of 'Cases' and 'Controversies.'" *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001) (quoting U.S. CONST. art. III, § 2). "The doctrine of mootness derives directly from the case-or-controversy limitation because an action that is moot cannot be characterized as an active case or controversy." *Id.* (internal quotations and citation omitted).

"A cause of action becomes moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju v. Vega*, 32 F.4th 1102, 1106 (11th Cir. 2022) (internal quotations and citation omitted). "In considering mootness, [courts] look at the events at the present time, not at the time the complaint was filed[.]" *Id.* (citation omitted). "If the injury ceases, or is rendered unamenable to judicial relief, then the case becomes moot and thereby incapable of further Article III adjudication." *Checker Cab Operators, Inc. v. Miami-Dade Cnty.*, 899 F.3d 908, 915 (11th Cir. 2018). Put another way, "[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Al Najjar*, 273 F.3d at 1336 (citation omitted). "Indeed, dismissal is required because mootness is jurisdictional." *Id.* (citation omitted).

Here, in Count Four, Petitioner "seeks an order directing Respondents to provide him with notice and an opportunity to contest removal to a third country...." Pet. 7. Petitioner's claim is now moot because ICE/ERO has provided Petitioner with the notice he seeks. Graumenz Decl. ¶ 11. Because ICE/ERO has provided Petitioner with the requested notice, Petitioner's claim of a due process violation for having not received said notice "no longer presents a live controversy with respect to which the court can give meaningful relief." *Djadju*, 32 F.4th at 1106 (internal quotations and citation omitted). And because this claim is now moot, "dismissal is required because mootness is jurisdictional." *Checker Cab Operators*, 899 F.3d at 915 (citation omitted).

b. The Court should decline jurisdiction over Petitioner's third country removal claim because Petitioner is a member of an already-certified, non-opt out class action.

Petitioner is a member of the non-opt out certified class in *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.). He is an individual subject to a final order of removal who ICE plans to remove to a third country. Because Petitioner is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide injunction, which the Supreme Court has now stayed finding that the Government is likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court. Given that dismissal is the appropriate remedy, Petitioner is not entitled to the relief sought in the Petition.

1. The Proceedings in *D.V.D.*

In March 2025, three plaintiffs instituted a putative class action suit challenging their third country removals in the District of Massachusetts captioned *D.V.D. v. DHS*, No. 12-cv-10767 (BEM) (D. Mass.). On March 28, 2025, that court entered a Temporary Restraining Order (ECF No. 34 at 2) ("*D.V.D. TRO*") enjoining DHS and others from "[r]emoving any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings" unless certain conditions are met. On April 18, 2025, the court in *D.V.D.* issued an order (*D.V.D.*, 25-10676-BEM) (ECF No. 64) granting the plaintiffs' motion for class certification (ECF No. 4) and motion for preliminary injunction. ECF No. 6. That Preliminary Injunction was national in effect, certifies a non-opt out class, and

establishes certain procedures that DHS must follow before removing an alien with a final order of removal to a third country. Specifically, the class is defined as:

> 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) who 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. ECF No. 64 at p. 23.

On May 21, 2025, the *D.V.D.* Court issued a Memorandum on Preliminary Injunction (ECF 118), offering the following summary and clarification of its Preliminary Injunction:

> All removals to third countries, i.e., removal to a country other than the country or countries designated during immigration proceedings as the country of removal on the non-citizen's order of removal, see 8 U.S.C. § 1231(b)(1)(C), must be preceded by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand. Dkt. 64 at 46– 47. Following notice, 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.*

The *D.V.D.* Court indicated that the Order applied "to the Defendants, including the Department of Homeland Security, as well as their officers, agents, servants, employees, attorneys, any person acting in concert, and any person with notice of the Preliminary Injunction." *Id.*

On June 23, 2025, the United States Supreme Court stayed the District of Massachusetts' preliminary injunction pending appeal in the United States First Circuit Court of Appeals. *Department of Homeland Security v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025). That same day, the District Court of Massachusetts ordered that its remedial order granting relief to eight individual class members DHS sought to remove to South Sudan remained in effect. Order, *D.V.D.* (ECF No. 176). Defendants moved to clarify the Supreme Court's Order and, on July 3, 2025, the Supreme Court granted the motion allowing the eight individual aliens to be removed to South Sudan. *Dep't of Homeland Sec. v. D. V. D.*, 145 S. Ct. 2627 (2025). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court's stay. *See id.*

2. Dismissal is Appropriate

First, this Court should avoid providing Petitioner with relief that may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. At its core, the Petition challenges how Respondents should implement Petitioner's third country removal. Am. Pet. 7. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts. *See Dept. of Homeland Sec. v. D.V.D.*, No. 24-A-1153, 2025 WL 1732103 (2025).

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. *Id.* The Supreme Court confirmed that its stay applied to individual class members by granting Defendants' motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Defendants are likely to succeed on the legal arguments presented in response to the instant habeas petition. Allowing Petitioner's Petition to proceed on the ground that ICE should be required to follow procedures similar to those set forth in the *D.V.D.* preliminary injunction in executing his removal to a third country or staying his removal to a third country would therefore be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.* As a result, this Court should not require Respondent to provide the degree of process described in the *D.V.D.* preliminary injunction before removing Petitioner to a third country because the Supreme Court will, by all indications, eventually hold that such process is not required under the law.

Additionally, it is well recognized that members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v. Vilsack*, No. 3:21-CV-514-MMH-LLL, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying

a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982). The Fourth Circuit has observed that at least four Courts of Appeals have affirmatively held, in the prisoner context, that "it is error to allow a prisoner to prosecute a separate action once his class has been certified." *Horns v. Whalen*, 922 F.2d 835, 835 (4th Cir. 1991) (table op.) (finding district court did not abuse discretion when it declined to decide an issue that overlapped with a class action "to avoid the risk of inconsistent adjudications);*see also id.* at n.4 (collecting district court cases).

This Court should decline to exercise jurisdiction over the Petition as a matter of comity because the District of Massachusetts has certified a class of people that will cover the same claim Petitioner pursues here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district."). *See also, e.g., Goff*, 672 F.2d at 704; *Horns*, 922 F.2d at 835; *McNeil v. Guthrie*, 945 F.2d 1163, 1165 (10th Cir. 1991) (individual suits for injunctive and declaratory relief cannot be brought where class action exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (same); *Groseclose v. Dutton*, 829 F.2d 581, 582 (6th Cir. 1987) (same); *Bennett v. Blanchard*, 802 F.2d 456 (6th Cir. 1986) (duplicative suits should be dismissed once class action certified); *Green v McKaskle*, 770 F.2d 445, 446-47 (5th Cir. 1985), *on reh'g*, 788 F.2d 1116 (5th Cir. 1986) (class member should not be permitted to pursue individual lawsuit seeking equitable relief within

subject matter of class action); *Bryan v. Werner*, 516 F.2d 233, 239 (3d Cir. 1975) (district court did not err in refusing to consider issue pending in a separate class action). Thus, dismissal is warranted.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that the Court dismiss the Petition. In the alternative, the Petition should be denied.

Respectfully submitted this 5th day of January, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Respondent's Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

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Respectfully submitted this 5th day of January, 2026.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

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