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9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11
 12 Marco Aurelio Garcia Carbajal,
 13
 14 Petitioner,
 15 v.
 16 Unknown Party, et al.,
 17 Respondents.

No. CV-25-04611-PHX-MTL (CDB)
ANSWER TO HABEAS PETITION

18
 19 **I. INTRODUCTION AND RELEVANT FACTS.**

20 Petitioner is a native and citizen of Guatemala. Doc. 1. Petitioner unlawfully
 21 entered the United States in April 2024 without admission, inspection or parole by
 22 immigration authorities. *Id.* Petitioner was placed in removal proceedings through the
 23 issuance of a Notice to Appear in immigration court. *Id.* As relief from removal, on
 24 February 25, 2025, Petitioner applied for asylum and withholding of removal under the
 25 Convention against Torture (CAT). *Id.* Petitioner was issued a final removal order and
 26 granted CAT protection from removal to Guatemala only on September 8, 2025. *Id.* On
 27 September 15, 2025, Petitioner received a Notice of Removal to Mexico but alleges
 28 Mexico “has not proven willing to accept him. No travel documents have been issued,

1 and ICE has provided no date certain or meaningful timeline for removal.” *Id.* Petitioner
2 therefore asserted in his petition that since he had been detained since January 27, 2025,
3 and there is no significant likelihood of removal in the reasonably foreseeable future, his
4 detention is unreasonably prolonged under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *Id.*
5 This claim is now moot because Petitioner was removed to Mexico on December 12,
6 2025. *Id.* Because he is no longer detained, the only proper claim raised in Petitioner’s
7 habeas petition, a request for release from custody, is now moot and the habeas petition
8 should be dismissed as such.

9 To be sure, Petitioner also made another claim not readily identifiable as moot due
10 to his removal—that is, that he was denied due process by removing him to Mexico
11 because he was not given judicial review of his negative credible fear finding as to
12 Mexico. However, notice and a credible fear interview with respect to third country
13 removal, both of which were provided to Petitioner, is all the process that is due, and
14 Petitioner can point to no statutory, regulatory or case law precedent that requires
15 additional procedures prior to third country removal. To the extent Petitioner seeks
16 additional procedures, he is a member of the *D.V.D.* class and his claims are foreclosed
17 by the parallel litigation.

18 Finally, this Court does not have jurisdiction to consider any claim arising from
19 the Attorney General’s decision to execute Petitioner’s final removal order under the plain
20 language of 8 U.S.C. § 1252(g).

21 **II. PETITIONER’S RELEASE FROM CUSTODY MOOTS THE HABEAS.**

22 On December 10, 2025, Petitioner filed the habeas petition in this case. Doc. 1.
23 Petitioner argued his detention was unconstitutionally indefinite under *Zadvydas*, because
24 there was no likelihood of his removal to Mexico in the reasonably foreseeable future and
25 that he was therefore entitled to release. *Id.* Because Petitioner has now been released from
26 custody and removed to Mexico pursuant to a final removal order that only granted relief
27 from removal to Guatemala, the claims raised in Petitioner’s habeas are moot and the case
28 should be dismissed.

1 The jurisdiction of federal courts depends on the existence of a live case or controversy
2 under Article III of the Constitution. *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996).
3 At any stage of the proceeding a case becomes moot when “it no longer present[s] a case
4 or controversy under Article III, § 2 of the Constitution.” *Spencer v. Kemna*, 523 U.S. 1, 7
5 (1998). The test for mootness is whether the court can give a party any effective relief in
6 the event that it decides the matter on the merits in their favor. *Reimers v. Oregon*, 863
7 F.2d 630, 632 (9th Cir. 1989). A case loses its quality as a live controversy and becomes
8 moot when the court can no longer issue effective relief. *Feldman v. Bomar*, 518 F.3d 637,
9 642-43 (9th Cir. 2008); *see also Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991)
10 (“if it appears that [the court is] without power to grant the relief requested, then the case
11 is moot.”).

12 Furthermore, Article III requires that a live case or controversy exist not only when the
13 complaint is filed, but throughout the litigation. *Seven Words L.L.C. v. Network Solutions*,
14 260 F.3d 1089, 1094-95 (9th Cir. 2001); *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986,
15 989 (9th Cir. 1999). A litigant must continue to have a personal stake in the outcome of the
16 suit throughout “all stages of federal judicial proceedings.” *United States v. Verdin*, 243
17 F.3d 1174, 1177 (9th Cir. 2001). The writ of habeas corpus affords relief to persons in
18 custody pursuant to the judgment of a court in violation of the Constitution, laws, or treaties
19 of the United States. *See* 28 U.S.C. § 2241.

20 Here, Petitioner’s release from custody and removal from the United States renders his
21 habeas petition moot because the relief the petition requested, his release from custody, is
22 no longer available to him because he is no longer detained. *McCullough v. Graber*, 726
23 F.3d 1057, 1060 (9th Cir. 2013). Thus, because the Court lacks the power to grant any
24 further effective relief, the habeas petition is now moot. *Reimers*, 863 F.2d 632; *Feldman*,
25 518 F.3d at 642-43; *Picrin-Peron*, 930 F.2d at 775. Likewise, because Petitioner is no
26 longer in custody, he no longer has a stake in the outcome of his habeas petition which
27 challenged the constitutionality of his continued detention. *Verdin*, 243 F.3d at 1177.
28 Petitioner’s case was rendered moot when he was released from detention and removed to

1 Mexico. *Abdala v. INS*, 488 F.3d 1061, 1064-65 (9th Cir. 2007) (discussing and collecting
2 cases wherein a petitioner's release from detention or parole or their removal rendered a
3 habeas petition moot).

4 **III. PETITIONER RECEIVED NOTICE AND AN OPPORTUNITY TO**
5 **ASSERT A CREDIBLE FEAR; ANY CLAIM TO BE ENTITLED TO**
6 **MORE PROCESS IS FORECLOSED BY *D.V.D.***

7 This Court should dismiss Petitioner's claims seeking additional, extra-statutory
8 procedures prior to removal from the United States to a third country,¹ because those claims
9 are already being litigated in the nationwide *D.V.D.* class action. *See D.V.D. v. DHS*, No.
10 25-cv-10676 (D. Mass.); *see also Clinton v. Jones*, 520 U.S. 681, 706 (1997) (noting that
11 a district court "has broad discretion to stay proceedings as an incident to its power to
12 control its own docket). As part of district courts' discretion to administer their docket,
13 courts have dismissed, without prejudice, suits brought by individuals whose claims are
14 duplicative of class claims in other litigation. *See, e.g., Griffin v. Gomez*, 139 F.3d 905 (9th
15 Cir. 1998) (in habeas case, discussing prior stay of Fifth Amendment challenge pending
16 completion of pending class action).

17 For example, a district court in the Central District of California recently dismissed
18 without prejudice a habeas case brought by a federal prisoner. *Herrera v. Birkholz*, No. 22-
19 cv-07784-RSWL-JDE, 2022 WL 18396018, at *7 (C.D. Cal. Dec. 1, 2022), *report and*
20 *recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023). The court reasoned
21 that petitioner's claims were based, in part, on a duplicative class action and were "not

22 ¹ In the Immigration and Nationality Act, Congress has enacted provisions
23 governing the determination of the country to which an alien is to be removed. *See* 8 U.S.C.
24 § 1231(b)(1), (2); *Jama v. Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 338-341
25 (2005). For certain aliens arriving in the United States (Section 1231(b)(1)) and then all
26 other aliens (Section 1231(b)(2)), the statute establishes sequences of countries where an
27 alien shall be removed, subject to certain disqualifying conditions (*e.g.*, the receiving
28 country will not accept the alien). For instance, under Section 1231(b)(2), possible
countries of removal can include a country designated by the alien, the alien's country of
citizenship, the alien's previous country of residence, the alien's country of birth, and the
country from which the alien departed for the United States. *See* 8 U.S.C. § 1231(b)(2).
Importantly, under both Section 1231(b)(1) and (b)(2), Congress provided a fail-safe option
in the event that other options do not work: An alien may be removed to any country willing
and able to accept him. *See* 8 U.S.C. § 1231(b)(1)(C)(iv), (2)(E)(vii).

1 property before the court.” *Herrera*, 2022 WL 18396018, at *4-6. In the related class action
2 case, Lompoc prisoners had alleged that the BOP had failed to take adequate safety
3 measures against COVID-19. *Id.* at *5. Likewise, in the habeas case, the petitioner-plaintiff
4 alleged that the Lompoc prison conditions created unreasonable COVID-19 risks, such as
5 the alleged “contaminated surfaces” and the lack of “social distancing.” *Id.* at *3. In the
6 class action, the district court granted the plaintiffs-petitioners’ motion for preliminary
7 injunction and the parties reached settlement. *Id.* at *5.

8 The district court in *Herrera* explained that “Petitioner’s allegations regarding the
9 Prison’s handling of COVID-19 are duplicative of the allegations in the *Torres* Class
10 Action, of which Petitioner is a member seeking the same relief, and thus, Petitioner is
11 barred from raising these claims by the terms of the settlement agreement.” *Id.* at *6. In
12 addition, “[t]o the extent Petitioner seeks to enforce the provisions of the settlement
13 agreement, he must do so through the class representative or class counsel, and not in his
14 own, separate case.” *Id.* (citing *Sykes v. Friederichs*, No. C 04-422MMCPR, 2007 WL
15 841789, at *6 n.12 (N.D. Cal. Mar. 20, 2007)). Accordingly, the district court dismissed
16 the habeas claims that were based on the related class action. *See id.*

17 Multiple courts of appeals have upheld dismissals of cases where parallel class actions
18 raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d 890,
19 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of [the]
20 complaint which duplicate the [class action’s] allegations and prayer for relief”); *McNeil*
21 *v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits for
22 injunctive and declaratory relief cannot be brought where a class action with the same
23 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class
24 action has been certified, “[s]eparate individual suits may not be maintained for equitable
25 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot
26 relitigate issues raised in a class action after it has been resolved, a class member should
27 not be able to prosecute a separate equitable action once his or her class has been
28 certified”).

1 Petitioner's claims that he was entitled to extra statutory procedures, even beyond
2 notice and a credible fear interview, prior to his removal to a third country, specifically
3 Mexico, substantially overlaps with the nationwide class action, *D.V.D.* Indeed, on April
4 18, 2025, the court in *D.V.D.* certified, pursuant to Fed. R. Civ. P. 23(b)(2), a class of
5 individuals defined as follows:

6 All individuals who have a final removal order issued in proceedings under
7 Section 240, 241(a)(5), or 238(b) of the INA (including withholding-only
8 proceedings) whom DHS has deported or will deport on or after February 18,
9 2025, to a country (a) not previously designated as the country or alternative
10 country of removal, and (b) not identified in writing in the prior proceedings
11 as a country to which the individual would be removed.

12 *D.V.D. v. U.S. Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1142968, at
13 *11 (D. Mass. Apr. 18, 2025), *opinion clarified*, No. CV 25-10676-BEM, 2025 WL
14 1323697 (D. Mass. May 7, 2025), *and opinion clarified*, No. CV 25-10676-BEM, 2025
15 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied sub nom. D.V.D v. U.S.*
16 *Dep't of Homeland Sec.*, No. CV 25-10676-BEM, 2025 WL 1495517 (D. Mass. May 26,
17 2025). Petitioner makes no mention of his class membership.

18 Further, because the *D.V.D.* class was certified pursuant Rule 23(b)(2), *see D.V.D.*, 2025
19 WL 1142968, at *14, 18, and 25, membership in the class is mandatory with no opportunity
20 to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011) (stating that
21 Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out, and does
22 not even oblige the [d]istrict [c]ourt to afford them notice of the action”); *Sanderson v.*
23 *Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal. Mar. 7, 2025)
24 (noting that “23(b)(2) class members have no opportunity to opt out”).

25 The *D.V.D.* court entered a nationwide preliminary injunction requiring the DHS to
26 comply with various procedures prior to removing a class member to a third country.
27 Critically, the Supreme Court stayed that preliminary injunction pending the disposition of
28 an appeal in the First Circuit and a petition for a writ of certiorari. *Dep't of Homeland Sec.*

1 v. *D.V.D.*, 145 S. Ct. 2153 (2025). Therefore, there is nothing in place right now that
2 requires DHS to provide more than a notice of removal to a third country and an
3 opportunity to assert a credible fear claim. There is no statute or regulation or case law that
4 provides for additional judicial review prior to removal to a third country. Rather, as a
5 member of the certified class, Petitioner is entitled to and bound by any relief that the
6 *D.V.D.* court ultimately grants and should be required to pursue any relief regarding his
7 removal to Mexico without sufficient process as part of that class.

8 The Court should dismiss Petitioner's claims that additional procedures should have
9 been afforded to him prior to a third country removal because they are subsumed within
10 the issues being actively litigated in *D.V.D.* To order that he was entitled to more process
11 in this case prior to third country removal would undermine what Rule 23 was intended to
12 ensure: consistency of treatment for similarly situated individuals. *See Howard v. Aetna*
13 *Life Ins. Co.*, No. CV2201505CJCMRWX, 2024 WL 1098789, at *11 (C.D. Cal. Feb. 27,
14 2024). It would also open the floodgates of parallel litigation in district courts all over the
15 country which could ultimately threaten the certification of the underlying class by creating
16 differences among the class members. Another court is already considering Petitioner's
17 alleged constitutional right to extra-statutory procedures before removal to a third country.
18 This Court should therefore dismiss any claims seeking such relief.

19 In short, because Petitioner received a credible fear interview with an asylum officer
20 with U.S. Citizenship and Immigration Services, prior to his third country removal, and
21 was found not to have a credible fear of removal to Mexico, and because no statute,
22 regulation or case law provides he is entitled to additional processes, the Court should deny
23 the habeas petition.

24 **IV. 8 U.S.C. § 1252(g) BARS THIS COURT'S REVIEW OF THE**
25 **EXECUTION OF PETITIONER'S REMOVAL ORDER.**

26 Congress spoke clearly that "no court" has jurisdiction over "any cause or claim"
27 arising from the execution of removal orders, "notwithstanding any other provision of
28 law," whether "statutory or nonstatutory," including habeas, mandamus, or the All Writs

1 Act. 8 U.S.C. § 1252(g). Accordingly, by its terms, this jurisdiction-stripping provision
2 precludes habeas review under 28 U.S.C. § 2241 (as well as review pursuant to the All
3 Writs Act and Administrative Procedure Act) of claims arising from a decision or action
4 to “execute” a final order of removal. *See Reno v. American-Arab Anti-Discrimination*
5 *Committee* (“AADC”), 525 U.S. 471, 482 (1999). Petitioner’s challenges to the
6 Government’s ability to execute a valid final removal order with the only limit on execution
7 being removal to Guatemala, are squarely prohibited by 8 U.S.C. § 1252(g).

8 **V. CONCLUSION.**

9 The Court should dismiss the habeas petition as moot because Petitioner was lawfully
10 removed to Mexico on December 12, 2025. Any claim that the execution of his removal
11 order was unlawful is barred by section 1252(g), and to the extent he claims he was entitled
12 to judicial review of his credible fear determination prior to third country removal—which
13 he was not—these claims are foreclosed by the parallel litigation in *D.V.D.* For all these
14 reasons, the habeas petition should be dismissed and denied.

15 Respectfully submitted this 25th day of December, 2025.

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