UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CONROY CONDECORE Petitioner, v. **TODD BLANCHE**, U.S. Attorney General, in his official capacity **KELEI B. WALKER**, Orlando Field Office Director, **U.S IMMIGRATION AND CUSTOMS ENFORCEMENT** **MARKWAYNE MULLIN**, Secretary, **DEPARTMENT OF HOMELAND SECURITY**, **TODD LYONS**, Acting Director, **U.S IMMIGRATION AND CUSTOMS ENFORCEMENT** **KEVIN GUTHRIE**, Executive Director, **SOUTH FLORIDA DETENTION CENTER / FLORIDA DIVISION OF EMERGENCY MANAGEMENT** In their official capacities, Respondents.	Civil No. Agency No.: 2:26-cv-1704-SPC-NPM A[redacted] **PETITIONER'S REPLY**

PETITIONER'S REPLY TO FEDERAL RESPONDENTS' RESPONSE TO EMERGENCY MOTIONS TO REOPEN AND FOR TEMPORARY RESTRAINING ORDER (ECF NO. 19)

The Federal Respondents' opposition to Petitioner's Emergency Motions (ECF Nos. 17, 18) raises five arguments. None has merit. The government's jurisdictional arguments have already been rejected by this Court in materially identical circumstances. Its internal

inconsistency argument mischaracterizes Petitioner's claims. Its Rule 60(b)(6) argument conflates enforcement of this Court's prior Order with the filing of a successive petition. Its *D.V.D.* class action argument rests on a preclusion theory that is legally impossible given that the very judgment it invokes is currently stayed. And most remarkably, the government's own submission, the March 30, 2025 DHS Guidance filed as Exhibit B, contains a footnote that expressly exempts Petitioner from the diplomatic assurances shortcut the government claims eliminates the need for further process.

The detention history filed by the government as Exhibit A to its Response (ECF No. 19-1) confirms the following: Petitioner was released from Krome North SPC on May 30, 2026, recorded in the detention system as "Released — Court Ordered." He was re-detained on July 2, 2026 and is now being held at Jackson Parish Correctional Center in Louisiana, a staging facility, in preparation for removal to Eswatini. He has been in ICE custody for a total of 191 days since his original re-detention on November 20, 2025. The government offers no declaration, no travel document, no evidence of Eswatini's specific acceptance of Petitioner, and no evidence that a reasonable fear interview has been conducted. The only new evidence before this Court is the government's own Guidance, which defeats its position.

ARGUMENT

I. THIS COURT HAS JURISDICTION. THE GOVERNMENT'S § 1252(g) ARGUMENT HAS ALREADY BEEN REJECTED BY THIS COURT.

The government's jurisdictional argument under 8 U.S.C. § 1252(g) is not new. This Court rejected it in *Campo-Gil v. Warden of Alligator Alcatraz*, No. 2:26-cv-00273-SPC-

NPM, 2026 WL 575165, at *1-2 (M.D. Fla. Mar. 2, 2026), and again *in Hernandez Galban v. Warden, S. Fla. Det. Facility*, No. 2:26-CV-01494-SPC-NPM, 2026 WL 1408503, at *1-2 (M.D. Fla. May 20, 2026), using identical analysis. Section 1252(g) applies only to three discrete actions: the Attorney General's "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). As this Court has twice held, a challenge to the lawfulness of detention, and to the government's failure to follow required pre-removal procedures, does not challenge the execution of a removal order. *Campo-Gil*, 2026 WL 575165, at *2 (noting "[a] decision in [petitioner's] favor would not impair ICE's ability to execute the removal order.").

The same analysis applies with equal force here. Petitioner does not ask this Court to vacate his removal order. He asks this Court to: (1) enforce its prior Order finding his detention unlawful; and (2) require the government to follow its own mandatory pre-removal procedures before placing him on a plane, in order to establish there is a significant likelihood of removal in the reasonably foreseeable future. None of these requests implicates § 1252(g). This Court has jurisdiction.

The government's invocation of §§ 1252(a)(4), 1252(a)(5), and 1252(b)(9) fares no better. Those provisions channel judicial review of "final orders of removal" and CAT determinations to the courts of appeals. But Petitioner is not asking this Court to review a final removal order or a CAT determination. He is asking this Court to enforce its own habeas judgment, a matter squarely within § 2241 jurisdiction as recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001), and to require the

government to conduct a reasonable fear interview before removal. The reasonable fear interview claim is a procedural due process challenge to government conduct, not a review of a final order. *See Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1365 (11th Cir. 2006) (finding INA does not divest district court of jurisdiction over § 2241 challenge to detention pending deportation where petitioner does not challenge "a final administrative order of removal" or seek review of a removal order).

II. THE GOVERNMENT'S INTERNAL INCONSISTENCY ARGUMENT IS A STRAWMAN.

The government contends that Petitioner cannot simultaneously argue that his removal is not likely in the reasonably foreseeable future and that the Court must intervene to prevent imminent removal. ECF No. 19, p. 5. This misreads Petitioner's position. The argument is not that removal is impossible. The argument is that removal cannot lawfully occur without a reasonable fear interview, without adequate notice, and in defiance of this Court's prior Order. These are not inconsistent propositions. The government is simultaneously wrong that SLRRFF has been established and capable of placing Petitioner on a plane in violation of law. The TRO does not prevent a lawful removal, it prevents an unlawful one. Preventing illegal government action is precisely what courts are for.

The government has not represented that Eswatini has provided diplomatic assurances that Petitioner will not be persecuted or tortured. The Guidance states that where such assurances have not been received or are not credible, DHS must provide written notice and afford the alien an opportunity to affirmatively state a fear. ECF No. 19-2, p. 2. The government has provided no evidence of Eswatini assurances in this record. No such

assurances appear in the declaration filed in this matter. No such assurances are referenced in the government's Response. The Guidance's own requirements therefore mandate fear screening procedures before removal to Eswatini, procedures the government has not followed.

The government's failure to conduct a reasonable fear interview is not merely a procedural deficiency, it is an independent and dispositive bar to any finding of SLRRFF with respect to Eswatini. SLRRFF requires a showing that removal to a specific country is significantly likely to occur in the reasonably foreseeable future. Where the government has never afforded the alien notice that a particular country is the intended destination, and has never conducted the fear screening that its own Guidance and 8 C.F.R. § 208.31 require before removal to that country can lawfully proceed, the government cannot establish that removal to that country is "significantly likely" in any legally cognizable sense, because the prerequisites to a lawful removal have not been satisfied. A removal that cannot lawfully be executed is not one that is significantly likely to occur. To hold otherwise would allow the government to satisfy its *Zadvydas* burden by pointing to a removal it has placed itself legally unable to execute through its own procedural failures.[1]

This deficiency also implicates Petitioner's constitutionally protected liberty interest in a more fundamental way. Petitioner has been deprived of his liberty — held in detention,

[1] This is not the first time the government has misrepresented its removal pathway to this Court. In its initial response to the habeas petition, the government represented that Petitioner would be removed to Mexico, a representation it made with the full knowledge that Mexico does not accept aliens with Petitioner's criminal history — rendering that asserted removal pathway illusory at the time it was presented. The substitution of Eswatini for Mexico as the intended destination, without notice to counsel or this Court, is consistent with a pattern of asserting removal is imminent and likely while the factual predicate for that assertion remains unverified or, worse, known to be unavailable.

transferred across multiple facilities, and staged for international removal — without ever being informed that Eswatini was the intended country of removal or being given any opportunity to demonstrate that removal there is legally impermissible. The Fifth Amendment's Due Process Clause requires, at minimum, that a person detained for the purpose of effecting removal be afforded notice of the country to which he will be removed and a meaningful opportunity to be heard on whether that removal can lawfully occur. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Where, as here, the government has withheld the identity of the destination country, conducted no fear screening, and proceeded directly to staging for international removal, the deprivation of liberty rests on a foundation the alien has never had the opportunity to challenge. That is not process — it is the absence of it. Petitioner's continued detention pending removal to Eswatini, without the procedural prerequisites that would establish whether that removal is even legally possible, violates the Due Process Clause independently of the *Zadvydas* analysis.

The government's own detention history (ECF No. 19-1) confirms that Petitioner is currently at Jackson Parish Correctional Center, a staging facility, awaiting removal to Eswatini. The urgency of the TRO request is not manufactured, it is confirmed by the government's own filing. If the government believed this Court's prior Order precluded re-detention and further removal efforts, it would not have re-detained Petitioner 33 days after his court-ordered release and transferred him to a Louisiana staging facility in preparation for international removal.

III. RULE 60(b)(6) IS THE PROPER VEHICLE FOR ENFORCEMENT OF THIS COURT'S PRIOR ORDER AND PETITIONER IS NOT FILING A SUCCESSIVE HABEAS PETITION.

The government argues that to the extent Petitioner raises new claims, Rule 60(b)(6) is unavailable because he is seeking relief not previously requested. ECF No. 19, pp. 5-6. This argument conflates two distinct theories advanced in Petitioner's motions.

First, the *Zadvydas* detention claim is not new — it is the exact claim this Court already adjudicated and resolved in Petitioner's favor. Doc. 14. Petitioner is not seeking to relitigate the merits of that claim. He is seeking to enforce this Court's prior Order against a government that re-detained him 33 days after court-ordered release without any material change in circumstances. The enforcement of a prior habeas judgment is the paradigmatic use of Rule 60(b)(6) and the Court's inherent enforcement authority. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-44 (1991); *Pierce v. Cook & Co.*, 518 F.2d 720 (10th Cir.1975) (en banc) (citation omitted), *cert. denied,* 423 U.S. 1079, 96 S.Ct. 866, 47 L.Ed.2d 89 (1976) (stating Rule 60(b)(6) as a "grand reservoir of equitable power to do justice in a particular case."). Other courts that have evaluated this issue have found Rule 60(b)(6) relief appropriate. *Vasquez v. Woosley,* No. 4:26-CV-42-RGJ, 2026 WL 1415472, at *3 (W.D. Ky. May 20, 2026) (noting the "finality" of the matter has been "abrogated" by Respondents' re-detention); *Blue Diamond Coal Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (quoting *Matarese v. LeFevre*, 801 F.2d 98, 106 (2d Cir. 1986) (noting Rule 60(b)(6) motions are " 'particularly appropriate ... in the context of a habeas proceeding in which conventional notions of finality have no place.").

Second, the Eswatini-specific claims of reasonable fear as a gay man and chain refoulement to Jamaica, arise from new government action taken after this Court's judgment. These claims do not attack the substance of this Court's prior ruling. They arise from the government's post-judgment conduct. Rule 60(b)(6) expressly provides relief for "any other reason that justifies relief" from a final judgment, and courts have consistently held that it encompasses situations where the opposing party's post-judgment conduct makes continued enforcement of the judgment equitable. *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005). The government cannot insulate its post-judgment conduct from review simply by labeling it a "new claim."

IV. THE *D.V.D.* CLASS ACTION DOES NOT BAR PETITIONER'S INDIVIDUAL HABEAS CLAIMS.

The government argues that Petitioner's claims are barred by the first-to-file rule and principles of claim preclusion because he purportedly falls within the certified Rule 23(b)(2) class in *D.V.D. v. Department of Homeland Security*. ECF No. 19 at 11–16. That argument fails for at least three independent reasons. Petitioner's principal claim arises from his renewed detention following this Court's prior grant of habeas relief under *Zadvydas v. Davis*, not from the March 30, 2025 Third-Country Removal Guidance challenged in *D.V.D.*; the government has not established that Petitioner is, in fact, a member of the *D.V.D.* class; and, in any event, the First Circuit's stay of the *D.V.D.* judgment leaves Petitioner without any presently enforceable classwide remedy, making dismissal of this individual habeas action both legally unwarranted and fundamentally inequitable.

A. Petitioner's Renewed Zadvydas Challenge Is Distinct from the Claims Litigated in *D.V.D.*

The government's preclusion argument improperly conflates two fundamentally different causes of action. Petitioner's principal claim challenges his renewed detention following this Court's grant of habeas relief under *Zadvydas v. Davis*, based upon the absence of a significant likelihood of removal in the reasonably foreseeable future

("SLRRFF"). This Court's prior Order granting habeas relief rested exclusively on *Zadvydas* and the government's inability to establish a legally executable removal within the reasonably foreseeable future. Doc. 14. That claim neither arose from nor depended upon DHS's March 30, 2025 Third-Country Removal Guidance.

By contrast, *D.V.D.* concerns the procedural protections required before DHS may effectuate removals to third countries pursuant to that Guidance. Although Petitioner's renewed detention is now intertwined with DHS's attempt to remove him to Eswatini, his continued detention remains independently governed by *Zadvydas*. Whether DHS complies with third-country removal procedures does not resolve whether Petitioner's continued detention is lawful under the Immigration and Nationality Act or this Court's prior habeas judgment. Because the claims arise from different operative facts, invoke different legal standards, and seek relief for different injuries, the government's attempt to collapse them into a single "duplicative" action is unsupported by the record.

B. The Government Has Not Established That Petitioner Is a Member of the *D.V.D.* Class.

The government asserts, without evidentiary support, that Petitioner "is a *D.V.D.* class member." ECF No. 19 at 12. It identifies no evidence demonstrating that Petitioner satisfies every element of the certified class definition. The *D.V.D.* class encompasses individuals subject to final removal orders under specified statutory provisions whom DHS has removed or seeks to remove to a third country that was not previously designated during their removal proceedings. *D.V.D. v. U.S. Department of Homeland Security*, 778 F. Supp. 3d 355, 378 (D. Mass. 2025).

Whether Petitioner falls within that definition is a factual issue the government has not developed. As the party invoking claim preclusion and the first-to-file rule, the government bears the burden of establishing the factual predicates necessary to invoke those doctrines. Its unsupported assertion of class membership is insufficient to foreclose Petitioner's access to habeas review.

C. Even Assuming Petitioner Falls Within the *D.V.D.* Class, That Action Does Not Bar This Individual Habeas Proceeding.

Even assuming arguendo that Petitioner falls within the certified class, neither the first-to-file rule nor principles of claim preclusion require dismissal of this action.

First, the district court's February 25, 2026 judgment in *D.V.D.* is presently stayed pending appeal before the First Circuit. *D.V.D. v. Department of Homeland Security*, No. 26-1212 (1st Cir. Mar. 16, 2026). As a consequence, the protections ordered by the district court are not presently enforceable. The government cannot reasonably contend that Petitioner must rely exclusively upon a class judgment whose operative relief has been suspended while simultaneously invoking that same stayed proceeding to extinguish his ability to pursue individualized habeas relief.

Second, Petitioner's claims seek relief that extends beyond the procedural protections at issue in *D.V.D.*. This petition challenges the legality of Petitioner's renewed detention, the government's attempt to circumvent this Court's prior habeas judgment, and the absence of any new facts establishing a significant likelihood of lawful removal in the reasonably foreseeable future. Those issues are unique to Petitioner's individual circumstances and were neither adjudicated nor resolved in *D.V.D.*

Finally, accepting the government's position would produce an untenable result. Under the government's theory, DHS could effectively foreclose individualized habeas review simply by obtaining certification of a mandatory Rule 23(b)(2) class, securing a stay of the resulting judgment pending appeal, and then proceeding with removals or renewed detention while class members lack any presently enforceable judicial protection. Neither Rule 23 nor 28 U.S.C. § 2241 contemplates such a jurisdictional vacuum. Habeas has long served as the traditional mechanism for testing the legality of executive detention, and nothing about the stayed posture of the *D.V.D.* litigation warrants depriving Petitioner of that remedy.

Accordingly, the government's reliance upon the first-to-file rule and claim preclusion should be rejected. Petitioner's claims are materially distinct from those litigated in *D.V.D.*, the government has not established that he is bound by that class action, and, even if he were, the pending appeal and stayed judgment do not justify dismissing this individual habeas proceeding or depriving Petitioner of meaningful judicial review.

V. THE GOVERNMENT'S OWN THIRD-COUNTRY REMOVAL GUIDANCE CONFIRMS THAT PETITIONER MUST RECEIVE ADDITIONAL PROCEDURAL PROTECTIONS BEFORE DHS MAY RELY UPON ESWATINI AS A LAWFULLY EXECUTABLE REMOVAL OPTION.

The government submitted the March 30, 2025 DHS Guidance as Exhibit B to its Response. ECF No. 19-2. Far from supporting the government's position, the Guidance confirms that additional procedural protections remain necessary before Petitioner may be removed to Eswatini.

Footnote 2 of the Guidance expressly provides: "These procedures only apply to aliens who have no ongoing proceeding in which to raise a claim under INA § 241(b)(3) or the Convention Against Torture. For aliens who have such proceedings, DHS will follow existing procedures." ECF No. 19-2 at 1 n.2 (emphasis added). Petitioner falls squarely within that exception. On September 15, 2020, he was granted withholding of removal to Jamaica under INA § 241(b)(3)—a final determination in a proceeding in which his protection claim was fully litigated and adjudicated. By its own terms, therefore, the Guidance's diplomatic-assurances framework permitting removal "without the need for further procedures" does not apply to Petitioner. Instead, the Guidance directs DHS to "follow existing procedures." Those existing procedures governing renewed protection claims before removal to a third country include referral for reasonable-fear screening under 8 C.F.R. § 208.31. Petitioner's procedural posture is precisely the circumstance Footnote 2 was designed to address.

The government likewise has not represented that it obtained diplomatic assurances from Eswatini that Petitioner would not be persecuted or tortured. The Guidance provides that, where such assurances have not been obtained or are not deemed sufficiently reliable, DHS must provide written notice identifying the proposed country of removal and afford the noncitizen an opportunity to affirmatively express a fear of removal to that country. ECF No. 19-2 at 2. On the present record, there is no evidence that Eswatini has provided diplomatic assurances. None appear in the declaration submitted by the government, and none are referenced anywhere in its Response. The government's own exhibit therefore

confirms that additional fear-screening procedures remain necessary before removal to Eswatini may lawfully occur.

Although the district court's decision in *D.V.D.* is presently stayed pending appeal, its analysis remains persuasive in explaining why generalized diplomatic assurances cannot substitute for individualized procedural protections. As the court explained, non-individualized assurances "offer no protection against either torture by non-state actors or chain refoulement, whereby the third country proceeds to return an individual to his country of origin." *D.V.D.*, 778 F. Supp. 3d at 390. That is precisely Petitioner's concern. He alleges that Eswatini will ultimately return him to Jamaica, where an Immigration Judge has already determined he faces persecution. The government's own litigation position in *D.V.D.* acknowledges that chain refoulement presents a legitimate due process concern, yet it simultaneously argues that this Court lacks authority to address that very concern in Petitioner's individual case. Those positions cannot be reconciled.

Indeed, the government's reliance on the March 30 Guidance is internally inconsistent. The Guidance expressly distinguishes between individuals with no prior protection proceedings and those, like Petitioner, whose claims under INA § 241(b)(3) have already been litigated and adjudicated. Rather than authorizing expedited third-country removal, the Guidance directs DHS to utilize the preexisting statutory and regulatory framework applicable to those individuals. Thus, the very exhibit upon which the government relies confirms that additional individualized procedures—not fewer—are required before DHS may lawfully treat removal to Eswatini as a legally executable option

capable of establishing a significant likelihood of removal in the reasonably foreseeable future.

VI. THE BALANCE OF EQUITIES AND PUBLIC INTEREST COMPEL A TRO.

The government offers no argument on the balance of equities or the public interest beyond its jurisdictional and merits contentions. On the current record: Petitioner is [redacted] with warrant-less arrest authority. He holds a withholding grant barring return to his country of nationality. Eswatini will detain him indefinitely in a maximum-security prison and then repatriate him to Jamaica — the country from which he has legal protection. No reasonable fear interview has been conducted. The government's own Guidance says one is required. This Court has already found Petitioner's detention unlawful once. The balance of equities admits of no serious debate.

The government's sole remaining argument is that a TRO would harm foreign relations by impeding removal to Eswatini. ECF No. 19-2 (DHS application for Supreme Court stay in D.V.D., raising foreign relations concern). But the public interest in the enforceability of this Court's Orders, the integrity of habeas corpus as a constitutional guarantee, and the government's compliance with its own non-refoulement obligations under the CAT and the 1967 Protocol vastly outweighs any diplomatic inconvenience caused by a brief stay of removal while this Court considers an already fully-briefed emergency motion. This Court granted a TRO-equivalent in Campo-Gil and Hernandez Galban under materially identical circumstances. It should do so here.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Petitioner's Emergency Motions (ECF Nos. 17, 18), this Court should:

A. Reopen this matter under Federal Rule of Civil Procedure 60(b)(6);

B. Issue a Temporary Restraining Order enjoining Respondents from removing Petitioner from the United States to Eswatini, Jamaica, or any other country pending further order of this Court;

C. Issue an Order to Show Cause requiring Respondents to demonstrate what material change in circumstances justifies re-detention and to produce evidence that: (a) Eswatini has provided individualized diplomatic assurances regarding Petitioner specifically; (b) a reasonable fear interview has been or will be conducted consistent with 8 C.F.R. § 208.31 and the government's own Guidance; and (c) the government has taken steps to ensure Petitioner will not be repatriated from Eswatini to Jamaica; and

D. Order Respondents to immediately provide Petitioner's counsel with telephone access to Petitioner and 24 hours' advance notice prior to any removal attempt.

S/ Sasha Watson

SASHA WATSON (State Bar No. 42845)
HAWM, PLLC
641 N. Rio Grande Avenue
ORLANDO, FLORIDA 32805
Telephone: (407) 802-3223
Fax Number: (407) 377-1971

Primary E-Mail: swatson@hawmlaw.com
Secondary E-Mail: rdhaiti@hawmlaw.com
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 5, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will furnish copies to all registered counsel of record.

/s/ Sasha Watson
Attorney for Petitioner