No. 26-1212

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

D.V.D., *et al.*,

Plaintiffs-Appellees,

v.

U.S. Department of Homeland Security, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts

EMERGENCY MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

The Supreme Court twice stayed the district court's sweeping nationwide, classwide preliminary injunction restraining the Department of Homeland Security's (DHS's) process for "third country removals" to a country other than the one designated in an alien's removal order. *See DHS v. D.V.D.*, 145 S. Ct. 2153 (2025) (*D.V.D. I*); *DHS v. D.V.D.,* 145 S. Ct. 2627, 2629 (2025) (*D.V.D. II*). But after dissolving that preliminary injunction, the district court immediately replaced it with equally sweeping final relief vacating DHS's policy and entering declaratory relief mirroring the earlier injunction. This Court must consider the Supreme Court's prior stay orders when determining whether to stay the district court's final judgment, *Trump v. Boyle*, 145 S. Ct. 2653, 2654 (2025), and they call for the same relief here.

In trying to evade the prior stays, the district court reasoned that even if the classwide preliminary injunction was barred by 8 U.S.C. §1252(f)(1), classwide vacatur and declaratory relief are not. But that conclusion is doubly misguided. To begin, such relief is equally barred by §1252(f)(1) to the extent it restrains DHS's operation of a covered provision. And the universal vacatur of the DHS Guidance—which is how

DHS "operates" the relevant portions of 8 U.S.C. §1231(b)—along with the declaration purporting to instruct DHS how to operate those portions, undoubtedly does so. In any event, the district court did not explain why it thought §1252(f)(1) must have been the sole basis for the Supreme Court's stay, given that the stay extended even to the individual named Plaintiffs.

Furthermore, all the other jurisdictional and merits arguments that the government made to the Supreme Court apply equally here. The district court's order is irreconcilable with §2242(d) of the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) and four additional subsections of §1252. These provisions collectively bar district courts from considering *all* challenges to orders of removal (including to their execution), channel claims arising from the removal process into the courts of appeals, and divest district courts of jurisdiction to hear challenges like this one.

Even setting aside the jurisdictional bars, the district court's analysis of the merits is also fatally flawed. It rejected the government's approach to utilizing country-wide assurances as to the treatment of removed aliens, instead insisting that "individualized assurances" are

required. ECF 241 at 65. But as the Supreme Court has made clear, the "Judiciary is not suited to second-guess such determinations," in either substance or scope, given their "foreign policy" ramifications. *Munaf v. Geren*, 553 U.S. 674, 702 (2008).

Moreover, DHS's procedures for removing individuals to third countries fully comply with the statute and due process. Indeed, the district court's analysis is particularly unjustifiable because many class members are aliens who have never been admitted into the United States and therefore do not have due process rights to any additional removal procedures beyond the ones the political branches have provided. *See DHS v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020). The district court's latest order did not meaningfully address the government's arguments on these points except to reiterate the same misguided analysis underlying its preliminary injunction.

The district court added only two new theories supporting relief: (1) a statutory holding that §1231(b)(3) itself requires notice and an opportunity to be heard; and (2) a holding that more process is needed to ensure compliance with §1231(b)'s requirements for selecting the country of removal. But these new theories are even more erroneous than the

ones that previously failed in the Supreme Court. As to the first, §1231(b)(3) cannot be plausibly construed to impose the requirements that the district court invented. As to the second, the government's authority to select a third country specified in §1231(b) turns on foreign-policy determinations vested entirely in its discretion and as to which an individual alien has nothing relevant to contest. And as to *both*, Congress expressly said "[n]othing in [§1231] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party." 8 U.S.C. §1231(h).

The equities likewise favor a stay here, as the Supreme Court already determined by staying the district court's preliminary injunction in this very case. The district court's order creates an unworkable scheme that materially impairs the ability of the government to enforce the immigration laws. Ex. A, Rubio Decl. ¶¶6-8; Ex. B, Schultz Decl. ¶¶5-15. As was the case with the preliminary injunction, the district court's relief would cause massive operational disruption. Removing aliens to third countries often involves tight timing and sensitive diplomatic coordination. The district court's tool for delay gives aliens the ability to thwart this delicate process.

As its sole (entirely non-merits) nod to the Supreme Court's prior stay, the district court stayed its judgment "until the First Circuit rules on" this motion or until March 12, 2026, "whichever occurs first." ECF 242 at 2. The government accordingly requests that this Court grant a stay by March 12, and that if it has not done so, it should grant an administrative stay until it rules on this motion and, if a stay is denied, for an additional 15 days to permit the government to seek orderly relief from the Supreme Court for a third time.

FACTUAL BACKGROUND

The named Plaintiffs are four aliens with final orders of removal resulting from proceedings in which they were notified that they could be removed to a designated country of removal or, potentially, a third country. ECF 1, Compl. ¶1

On March 23, 2025, Plaintiffs sued on behalf of a putative class, alleging that DHS violates the Immigration and Nationality Act (INA), its regulations, and the Due Process Clause by removing aliens to a third country without first providing them with notice or an opportunity to assert a claim that they fear persecution or torture if removed to that third country.

On March 30, 2025, Defendants issued new guidance governing DHS's removal of final-order aliens to third countries (DHS Guidance). ECF 43-1. This Guidance provides that, before an alien's removal to a country that had not previously been designated as the country of removal, DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured. *Id.* at 1. If the United States has received such assurances, and if the U.S. Department of State (State) believes those assurances to be credible, the alien may be removed without the need for further procedures. *Id.* at 1-2.

If the United States has not received such assurances, or if State judges them not credible, DHS will inform aliens with final orders of removal pursuant to 8 U.S.C. §§1229a, 1231(a)(5), or 1228(b) of their removal to a third country. ECF 43-1 at 2.

If an alien affirmatively states a fear of removal to that third country, U.S. Citizenship and Immigration Services (USCIS) will screen the alien for eligibility for protection under 8 U.S.C. §1231(b)(3) and under CAT. *Id.* at 2. If USCIS determines that the alien would more likely than not be persecuted on a statutorily protected ground or

tortured in the country of removal, DHS will take one of three actions. *Id.* First, if "the alien was not previously in proceedings before the Immigration Court, USCIS will refer the matter to the Immigration Court in the first instance." *Id.* Second, if "the alien was previously in proceedings before the Immigration Court," DHS "may file a motion to reopen with the Immigration Court or Board of Immigration Appeals, as appropriate, for further proceedings for the sole purpose of determining eligibility for protection under [§1231(b)(3)] and CAT for the country of removal." *Id.* Or, third, "ICE may choose to designate another country for removal." *Id.*

On April 18, 2025, the district court certified a class and issued a classwide preliminary injunction. The court certified a class of

> All individuals who have a final 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 proceeding as a country to which the individual would be removed.

ECF 64 at 23. The preliminary injunction, as clarified, provided that all removals to a country other than the country or countries designated during immigration proceedings must be preceded by, *inter alia,* written

notice of the country to which ICE seeks to remove the alien and a minimum 10-day waiting period for the alien to raise a fear-based claim. *Id.* at 46-47.

After this Court denied a stay pending appeal, Defendants obtained a stay from the Supreme Court. *D.V.D. I*, 145 S. Ct. 2153. Hours later, despite the stay, the district court purported to enforce its just-stayed injunction as to eight class members—all convicted of heinous crimes—in DHS custody. ECF 176.

Defendants moved to clarify the Supreme Court's stay, and the Supreme Court granted the motion, explaining that the "June 23 order stayed the April 18 preliminary injunction in full" and therefore the district court could not "enforce an injunction that [the] stay rendered unenforceable." *D.V.D. II,* 145 S. Ct. at 2629.

Plaintiffs moved for partial summary judgment, making substantially the same arguments as before. ECF 193. On February 20, 2026, after oral argument in the preliminary injunction appeal, this Court remanded to "facilitate more expeditious appellate review and ultimately final resolution of this case." *D.V.D. v. DHS,* 25-1393 (Feb. 20, 2026). Five days later, the district court granted partial summary

judgment and entered final judgment on those claims by vacating the DHS Guidance and entering nationwide, classwide declaratory relief that largely mirrored its earlier injunction order.

The district court's judgment relies on the same claims and substantially the same grounds as its preliminary injunction. The district court granted the government's request for a stay pending appeal "in narrow part" by staying its judgment "for up to fifteen days" to give this Court an opportunity to grant a stay. Order 3, 77.

ARGUMENT

Courts consider four factors in assessing a motion for stay pending appeal: (1) the movant's likelihood of prevailing on the merits of the appeal, (2) whether the movant will suffer irreparable harm absent a stay, (3) the harm that other parties will suffer if a stay is granted, and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). When the government is a party, its interests and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The district court lacked jurisdiction over this case, misunderstood the merits, and entered overbroad relief. The merits and equities favor a stay, just as the Supreme Court already concluded at an earlier stage.

I. Defendants Are Likely To Prevail on the Merits.

A. The nationwide declaratory judgment and universal vacatur violate 8 U.S.C. §1252(f)(1).

The district court's order contains multiple serious legal errors that justify an immediate stay. Most prominently, the relief issued by the district court is prohibited by 8 U.S.C. §1252(f)(1), which limits lower courts' "jurisdiction or authority to *enjoin or restrain* the operation of" covered provisions," "other than with respect to ... an individual alien against whom proceedings ... have been initiated." *Id.* (emphasis added). Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Biden v. Texas*, 597 U.S. 785, 797 (2022) (quoting *Garland v. Aleman Gonzalez*, 596 U.S. 543, 544 (2022)). Section 1231, the provision at issue here, is one such covered provision. *Aleman Gonzalez*, 596 U.S. at 544-50. The Supreme Court has construed "restrain" broadly to mean to "check, hold back, or prevent (a person or thing) from some course of action," to "inhibit particular actions," or to "stop (or perhaps compel)" action. *Aleman Gonzalez*, 596 U.S. at 549.

Although not titled an "injunction," the relief issued by the district court still runs afoul of §1252(f)(1). First, vacatur (or "set-aside" relief) is barred by §1252(f)(1). Section 1252(f)(1) precludes coercive relief that compels or prohibits the Executive's operation of the covered provisions. Although vacatur of an agency decision can be a "less drastic remedy" than an injunction in some respects, *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), vacatur still prohibits the agency from giving effect to its guidance. A district court therefore necessarily "restrain[s] the operation of" the covered INA provisions when it vacates agency guidance implementing them. 8 U.S.C. §1252(f)(1).

Second, although this Court has held that §1252(f)(1) does not bar classwide declaratory relief, *Brito v. Garland,* 22 F.4th 240, 251 (1st Cir. 2021), this Court decided *Brito* before the Supreme Court's decision in *Aleman Gonzalez*, which noted that §1252(f)(1)'s use of the word "restrain" could reach orders that "inhibit particular actions" as opposed to merely "stop (or perhaps compel) such acts." 596 U.S. at 549. The district court's declaratory relief at least "inhibits" DHS's actions. The declaratory judgment would allow "every single member of the class" "to "immediately seek an injunction grounded on the authority of the

declaratory judgment"—even before appellate proceedings have concluded. *Alli v. Decker*, 650 F.3d 1007, 1020 n.2 (3d Cir. 2011) (Fuentes, J., dissenting). That has the "practical effect" of a "class-wide injunction"—and presumably was so intended—which is what §1252(f)(1) was meant to prevent. *Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018).

B. The district court lacked jurisdiction for several other reasons.

In addition to §1252(f)(1), several other jurisdictional bars also foreclose Plaintiffs' challenges here.

1. Plaintiffs' claims are barred by §1252(g).

Congress stripped district courts of jurisdiction over "any cause or claim … arising from the decision or action … to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. §1252(g). Plaintiffs' claims arise entirely from actions taken to "execute removal orders," *id.*—namely, to remove them to third countries without the additional process they demand—and thus those claims "fall[] squarely within" the INA's jurisdictional bar, *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 487 (1999) ("*AADC*").

The district court ignored the numerous courts of appeals that have held that claims like Plaintiffs' seeking a stay of removal—even temporarily to assert other claims to relief—are barred by §1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022); *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("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."); *Hamama*, 912 F.3d at 874–77 (concluding that §1252(g) stripped district court of jurisdiction over removal-based claims); *E.F.L. v. Prim,* 986 F.3d 959, 964-65 (7th Cir. 2021) (upholding jurisdictional bar despite argument that petitioner was challenging DHS's legal authority, not its "discretionary decisions"); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020) (upholding jurisdictional bar because "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); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (upholding jurisdictional bar against constitutional claims arising from the execution of removal order).

Instead, the district court doubled down on its previous atextual interpretation of §1252(g) to include an exception for claims not challenging DHS's exercise of "discretion" and invented another exception for "policy" challenges. Order 19-20. Of course, §1252(g) contains no such exceptions. Rather, the text reaches "*any* cause or claim."

The district court's reliance on *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023), and *DHS v. Regents of the University of California*, 591 U.S. 1 (2020), to support its atextual exceptions is misplaced. This Court's decision in *Kong* was based on its determination that Kong presented an action for damages arising from his *detention,* not his *removal*. 62 F.4th at 616-17. This Court made clear that if Kong had sought a stay of his removal—as opposed to merely relief from detention—§1252(g) would have applied. *Id.* Conversely, Plaintiffs' claims here are entirely based on DHS's decision to execute their removal orders, and the procedures they seek would interfere with actions "integral to the act of executing a removal order." *Id.*

Likewise, *Regents* provides no support for the district court's invention of a broad exception for "policy challenges." *Regents* concerned

the Deferred Action for Childhood Arrivals (DACA) program—a comprehensive program, for aliens with and without final orders of removal, with various benefits including work authorization, Social Security, and Medicare. 591 U.S. at 19. Because DACA was "more than just a non-enforcement policy," and "access to these types of benefits is an interest Courts are often called upon to protect," the fact that a narrow aspect of the program related to removal orders did not mean the broader APA challenges raised there fell within §1252(g)'s scope. *Id.*

Here, Plaintiffs' challenge, to the extent it can even be characterized as a "policy challenge," directly seeks to regulate DHS's enforcement of removal orders. Indeed, Plaintiffs themselves recognize that they seek to directly prevent their removal, at least temporarily, which is why they only urged an exception to §1252(g) centered around purported non-discretionary duties. The district court erred in concluding that *Regents* permits Plaintiffs' claims, particularly where *AADC* supports the government's view that simply framing a challenge as one to a specific "policy" is insufficient to avoid section 1252(g). 525 U.S. at 472 (addressing eight aliens' challenge to an alleged INS practice of "targeting" a particular political group).

2. Plaintiffs' claims are barred by §2242(d) of the Foreign Affairs Reform and Restructuring Act.

Independently, the district court lacked jurisdiction as to Plaintiffs' CAT claims under FARRA §2242(d). That provision implements Article 3 of CAT and provides that "[n]otwithstanding 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[.]" FARRA §2242(d). Likewise, FARRA confirms that "nothing in this section shall be construed as providing any court jurisdiction to consider or review *claims* raised under [CAT] or this section, or *any other determination* made with respect to the *application* of [CAT] . . . except as part of the review of a final order of removal." *Id.* (emphasis added); *see also* 8 U.S.C. §1252(a)(4) ("a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of any cause or claim under [CAT].").

Plaintiffs' suit—which challenges DHS's existing procedures for certain CAT claims—both concerns the "application" of CAT and is a "claim raised under [CAT]." Order 50 (finding a due process interest based on CAT). Thus, the district court lacked jurisdiction.

Here, the district court simply declared that "no challenge is made in this case to the FARRA regulations." Order 33. But FARRA bars judicial review of both "claims raised under" CAT *and* "any other determination made with respect to the application of" CAT. §2242(d). When the Executive sets the procedures for complying with CAT, it has made a "determination" with "respect to the application of the policy set forth in" CAT. *Id.* A challenge to that determination runs headlong into FARRA's jurisdictional bar.

3. To the extent Plaintiffs' claims are reviewable at all, they are reviewable only in a petition for review.

To the extent Plaintiffs' claims, which solely and directly relate to relief that must be sought in removal proceedings, are reviewable at all by this Court, it would be in a petition for review. 8 U.S.C. §§1252(a)(4), (a)(5), (b)(9). Plaintiffs hardly try to disguise their claims so as not to fall within these claim channeling statutes' scope. Rather, they and the district court assert that because Plaintiffs' fear-related claims are effectively unreviewable in the administrative process, particularly prior to removal, these statutes do not apply. Order 22-31 (citing *Aguilar v. USCIS*, 510 F.3d 1, 9-12 (1st Cir. 2007)). But to the extent some class

members' claims are effectively unreviewable for any of the district court's stated reasons—which Defendants do not concede—many others in the class receive far more than the minimum notice of third-country removal and can readily reopen their removal proceedings to assert fear claims to a third country. *See* Exs. C-D (citing *Matter of A-S-M-*, 28 I&N Dec. 282 (BIA 2021)). That variance alone renders the classwide relief (indeed, the class definition) improper. And in any event, even if a petition for review is unavailable in some cases, that simply means that Congress determined that no review is available. It is not a license to ignore the plain text of §1252.

C. Existing Procedures Satisfy Due Process and §1231(b)(3).

Even if the district court had jurisdiction, it erred in holding that Plaintiffs have a constitutional and statutory right to additional procedures, beyond DHS's Guidance, before being removed to a third country. Plaintiffs, who all have final orders of removal, already received the benefit of §1231(b)(3), commonly known as the Withholding Statute, in removal proceedings. Moreover, any liberty interest arising from FARRA or the Withholding Statute is satisfied by the process Plaintiffs

received in their removal proceedings in combination with DHS's Guidance.

1. *The Government will likely succeed on plaintiffs' due process claims.*

Recognizing that some class members are ineligible for withholding of removal, the district court reached Plaintiffs' due process claims and ruled for Plaintiffs. Its analysis was flawed top to bottom. Many class members lack a right to process beyond what Congress has provided, rendering classwide relief impermissible. Additional process would be pointless for class members who are covered by diplomatic assurances the Executive Branch has deemed credible. And even if all of that were wrong, the process provided by the DHS Guidance and removal proceedings satisfies any applicable constitutional requirements.

a. First, additional process would be pointless for many class members—those who will be removed subject to diplomatic assurances that the alien will not be tortured which the Executive Branch has deemed credible—because neither immigration judges nor courts can second-guess those credibility determinations. And that is precisely what Plaintiffs would necessarily seek to do in the additional procedures sought.

As noted, the DHS Guidance provides that an alien may be removed to a "country [that] has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured." ECF 43-1. If State finds that country's assurances credible, "the alien may be removed without the need for further procedures." *Id.*

The Constitution requires nothing further. The Supreme Court has already held that when the Executive determines a country will not torture a person on his removal, that is conclusive. *Munaf*, 553 U.S. at 702-03. Indeed, "[u]nder *Munaf* … the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee." *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009).

Munaf "applies here *a fortiori*: That case involved transfer of American citizens, whereas this case involves transfer of alien detainees with no constitutional or statutory right to enter the United States." *Id.* at 517-18 (Kavanaugh, J., concurring). When the Executive decides, via diplomatic assurances, an alien will not be tortured abroad, courts may not "second-guess [that] assessment.". *Id.* at 517 (citation omitted); *see Munaf*, 553 U.S. at 703 n.6.

The district court disagreed, but it gave no sound reason for doing so. First, it insisted that the Executive Branch must make an "individualized determination" to satisfy due process, citing 8 C.F.R. §208.18(c)(2). Order 63-64. Of course, that has no bearing on what the Constitution might require. Anyway, the court was wrong. While the regulations say that an assurance must be limited to a "specific country," nothing requires an alien-by-alien determination. 8 C.F.R. §208.18(c)(1). The Secretary is free to conclude that "an alien" would not be tortured upon removal, on the ground that *no alien* would be treated that way in light of the strength and reliability of the assurances provided. *Id*.

The district court also relied on *Khouzam v. Attorney General*, 549 F.3d 235, 257 (3d Cir. 2008), but that decision is inapposite because it arose in the context of a petition for review where DHS was seeking to *terminate* an alien's withholding of removal to Egypt, an obviously distinguishing factor in a due process analysis. To the extent the termination context is not a distinguishable factor, courts may not "second-guess" the scope of the Executive's conclusion any more than its substance. *See Kiyemba*, 561 F.3d at 517-18 (Kavanaugh, J., concurring). The decision that a foreign government's categorical assurance against

torture is sufficient to be accepted for all aliens is itself a "foreign policy" judgment the Judiciary "is not suited" to question. *Munaf*, 553 U.S. at 702.

Next, the district court took issue with the assurances being "procedurally insufficient" because they do not allow even "existential challenges" that do not seek to "second-guess" the Executive's judgment. Order 67. But that objection, like the district court's other objections, does not sound in procedural due process at all. It is instead a *substantive* objection that an assurance alone provides insufficient basis for the Executive to find that an alien is not likely to be tortured. The Supreme Court has rejected attempts to "recast in 'procedural due process' terms" what is really a challenge to the "'substantive'" criteria that the government has adopted. *Reno v. Flores*, 507 U.S. 292, 308 (1993) (rejecting similar argument for "individual[ized]" procedure). For good reason: It makes no sense to require the government to provide additional process with respect to potential evidence that is immaterial under the substantive standard the government has adopted. When the Executive is satisfied based on another country's diplomatic assurances that no

alien will be tortured in the receiving country, neither an "individualized determination" nor "existential challenge" serves any rational purpose.

Moreover, the district court's examples of challenges that it claims do not "second guess" the diplomatic assurances, Order 68, are not present here and highlight the fact that Plaintiffs' claims are not suitable for classwide resolution. Any such claims, should they arise, directly relate to the application of CAT to a particular alien and therefore are only appropriate in a petition for review. 8 U.S.C. §1231(a)(4); *Khouzam,* 549 F.3d at 244-45.

b. For aliens being removed to a third country not covered by an adequate assurance, the DHS Guidance satisfies due process by providing each alien with notice and providing screening if the alien states that he fears removal there. The district court concluded those procedures were inadequate, on a classwide basis, by erroneously applying the *Mathews* balancing framework.

Previously, the district court ruled that the Constitution requires a "meaningful opportunity" to assert new claims, which it said means at least ten days for an alien to express a fear of return, a "reasonable fear" standard for screening claims, and at least fifteen days to move to reopen

immigration proceedings if he fails to establish a reasonable fear. ECF 118 at 2. The district court did not repeat those specific timing requirements in its final judgment, but did not disavow them. As before, the district court offered no basis in law for that supposedly constitutional rule, nor any sound reason that could reconcile them with the constitutionality of expedited-removal proceedings, where aliens must raise fears of removal rapidly, are often processed in a matter of hours, and receive limited judicial review. *See* 8 U.S.C. §1225(b)(1)(B)(i), (b)(1)(B)(iii)(III); 8 C.F.R. §1003.42(e); *Thuraissigiam*, 591 U.S. at 138-40.

The district court's lengthy due process analysis instead overlooks the substantial process available to aliens and mistakenly skews the balancing inquiry.

The district court improperly discounted the extensive process available to all class members. All have final orders of removal, meaning they received the panoply of procedural safeguards and protections in their prior immigration proceedings, including the opportunity to raise withholding of removal and CAT claims and voice fears as to any potential countries of removal. Moreover, they can move to reopen those

past proceedings at any time if conditions, characteristics, or country designations change. 8 C.F.R §§1003.2(c), 1003.23(b); *see* Ex. C-D; *Matter of A-S-M-*, 28 I&N Dec. 282.

The district court also skewed the balancing inquiry by concluding that the possibility that *some* class members could have "viable CAT claims" dictated process sufficient to guarantee that *all* class members must be able to present *all* CAT claims. But *Mathews* directs balancing the risks of an erroneous deprivation against other interests. The procedures for run-of-the-mill removal proceedings expressly and permissibly do not seek a 100% accuracy rate. 8 C.F.R. §§208.16(c)(2), 208.17(a) (adopting a "more likely than not" standard). And hypothetical outlier class members' claims cannot control classwide relief, because courts may order only what "would satisfy the minimum requirements of due process." *Landon*, 459 U.S. at 34-35; *see Jennings,* 583 U.S. at 318 (directing reconsideration of whether due process claims can be litigated on behalf of a Rule 23(b)(2) class at all, given significant variations material to due-process analysis).

c. Last, the district court erred in holding that many aliens in the class—specifically, unadmitted aliens—have a right to more process than Congress provides.

The Supreme Court has repeatedly held that "the due process rights of an alien seeking initial entry" are no greater than "[w]hatever the procedure[s] authorized by Congress." *Thuraissigiam*, 591 U.S. at 139 citation omitted). For aliens who have never been admitted—a group which undoubtedly includes many members of the certified class—"the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (emphasis added); *accord Thuraissigiam*, 591 U.S. at 138-40.

To this end, the Supreme Court has also long applied the so-called "entry fiction" that all unadmitted aliens "are treated for due process purposes as if stopped at the border." *Id.* at 139 (citation omitted). Indeed, that is so "even [for] those paroled elsewhere in the country for years pending removal." *Id.* The Supreme Court has applied the entry fiction to aliens notwithstanding their claims to having "entered" and developed significant ties to this country. *See*, *e.g.*, *Kaplan v. Tod*, 267 U.S. 228, 230

(1925) (mentally disabled girl paroled into relatives' care for nine years must be "regarded as stopped at the boundary line"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 214-15 (1953) (alien with 25 years' of lawful presence who sought to reenter enjoyed "no additional rights" beyond those granted by "legislative grace"). Compared to these cases, it follows *a fortiori* that an unlawful entrant who violates our laws and evades detection must, once found, be "treated as if stopped at the border." *Mezei*, 345 U.S. at 215; *see also Thuraissigiam*, 591 U.S. at 140 (holding that aliens who enter the United States illegally "cannot be said to have 'effected an entry'" and remain "on the threshold").

Congress has not provided the procedures sought by Plaintiffs and declared by the district court. Therefore, for those members of the class who have not "effected an entry" and "remain on the threshold," they have received all the due process to which they are entitled. *See id.* The district court disagreed, inventing an exception for claims that do not relate to "admission." Order 55. Contrary to the district court's conclusion, this does not "make[] sense." *Id.*

Most obviously, the district court's dichotomy is irreconcilable with *Thuraissigiam*. Thurassigiam challenged the constitutionality of

expedited removal procedures which precluded judicial review of not only his *admission* but also his claim for statutory withholding or CAT protection. *Thuraissigiam,* 591 U.S. at 118 (noting that Thuraissigiam sought an opportunity to apply for asylum, withholding of removal, and CAT protection). On the district court's view, the Supreme Court should have ruled for Thuraissigiam with respect to his withholding and CAT claims (or at least conducted *Mathews* balancing for those claims), even though it denied his claimed entitlement to additional procedures related to admission. Of course, the Supreme Court did no such thing.

The district court did not cite a single case from a court of appeals adopting its "collateral-to-admission" exception to the longstanding entry fiction. Courts of appeals, including this Court, have declined to extend due process beyond what Congress has provided to unadmitted aliens even when the due process claim arises out of the withholding statute or CAT. *See, e.g.*, *Enwonwu v. Gonzales,* 438 F.3d 22, 30 (1st Cir. 2006) (dismissing a substantive due process argument related to the alien's CAT claim because it would disrupt "the constitutional assignment of responsibilities among the three branches of the federal government over matters of immigration"); *Bhaktibhai-Patel v. Garland,* 32 F.4th 180, 199

(2d Cir. 2022) ("Congress's decision to preclude judicial review for withholding-only decisions raises no due process concerns with respect to illegal reentrants … who have failed to effect an entry into the country."); *Rauda,* 55 F.4th at 781 ("Congress has already balanced the amount of process available to petitioners with the executive's prerogative to remove individuals."). Accordingly, the district court erred in determining that the unadmitted aliens in the class have any due process rights beyond what Congress has provided.

2. *Section 1231(b) does not require greater process.*

The district court tried two ways to use §1231(b) to bolster its holding that additional process is required. Neither works.

First, the district court ruled, as a matter of constitutional avoidance, that §1231(b)(3) itself statutorily entitles class members to "notice and an opportunity to present claims for statutory withholding of removal." Order 48. But the canon is a "tool for choosing between competing *plausible* interpretations of a statutory text," *Clark v. Martinez*, 543 U.S. 371, 381 (2005), and the district court identified no text that could plausibly impose a mandatory "notice and opportunity" requirement. Section 1231(b)(3) merely says that DHS "may not remove

an alien to a country if [DHS] decides that the alien's life or freedom would be threatened in that country."

To the extent Section 1231(b)(3) can be construed to impose any procedural requirements, they were clearly satisfied by class members' prior immigration proceedings, which included the opportunity to voice fears of removal to their home country or any other country to which they may be returned."[1] Once those proceedings end, class members may move to reopen past proceedings to assert third country fear claims as appropriate. Ex. C-D; *Matter of A-S-M-*, 28 I&N Dec. 282. The DHS Guidance provides these aliens with additional process before third-country removal.

It is especially obvious that the district court was not interpreting the text of §1231(b)(2) given its past stated views of what "notice and opportunity" means in this context. ECF 118 at 2 (a "meaningful opportunity" requires specific procedures, including at least "ten days" to raise a fear-based claim after receiving written notice of a country designation and at least "fifteen days" after a negative fear screening "to

[1] U.S. Citizenship & Immig. Servs., Form I-589, Application for Asylum and for Withholding of Removal (2025), https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf.

seek reopening"). As in *Jennings*, these procedures have no basis in the statutory text. The canon of constitutional avoidance is not "a license to graft [additional procedures] onto the text" of the statute. *Jennings*, 583 U.S. at 298.

Second, the district court ruled that aliens have a due process right to challenge the government's compliance with §1231(b)(2)'s ordering of permissible countries of removal. Contrary to the district court's suggestion, §1231(b)(2) does not allow for judicial second-guessing.

Indeed, §1231(b)(2) does not create a liberty interest in the first place: It expressly does not "create any substantive or procedural right or benefit that is legally enforceable by any party against" the government. 8 U.S.C. §1231(h). Nor is there such a thing as a liberty interest in process itself. *Olim v. Wakinekona*, 461 U.S. 238, 250 n.12 (1983). And in any event, the §1231(b) selection process is not one in which aliens have a constitutional due-process right to participate.

Section 1231(b)(2) specifies a sequence for determining to which country an alien may be removed—starting with the country designated by the alien himself (if any)—but, if certain exceptions apply, DHS may remove the alien to any third country willing to take him. 8 U.S.C.

§1231(b)(2)(A)-(E). Critically, the exceptions rest not on factual findings that an alien can contest in an adversarial proceeding, but on foreign-policy determinations within the Executive Branch's discretion that are not amenable to judicial second-guessing: *e.g.*, removal to the alien-designated country would be prejudicial to the United States"; or the home country is "not willing to accept" the alien; or it is "inadvisable" to return the alien to other enumerated countries, to name a few. 8 U.S.C. § 1231(b)(2)(C)(iv). Such determinations turn on national security and foreign policy considerations vested in the Executive's exclusive discretion and as to which the alien can raise no claim. *See Munaf,* 553 U.S. at 689. Far from being "reluctant to intrude upon th[is] authority," *id.*, the district court inserted itself into this process by holding that due process requires additional procedures beyond the DHS Guidance.

II. The Remaining Factors Support a Stay Pending Appeal.

As the Supreme Court has already necessarily determined, the district court's order preventing the government, on a nationwide basis, from implementing its policies for third-country removals irreparably harms the government and contravenes the public interest. *See D.V.D. I,* 145 S. Ct. 2153; *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts,

C.J., in chambers). The district court's nationwide relief also undermines the Executive Branch's constitutional and statutory authority over immigration and constitutes an "unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum*, 569 U.S. 108, 116 (2013). An injunction that prevents the Executive Branch from carrying out its broad authority over immigration matters is "an improper intrusion by a federal court into the workings of a coordinate branch of the Government." *INS v. Legalization Assistance Project of L.A. Cnty. Fed'n of Lab.*, 510 U.S. 1301, 1305-06 (1993) (O'Connor, J., in chambers). Moreover, "[t]here is always a public interest in prompt execution of removal orders." *Nken*, 556 U.S. at 436. With a single order, a single district court has interfered with the execution of an unknown number—perhaps thousands—of pending removal orders and risks irreparably harming the Executive's ability to negotiate the removal of aliens to third countries. *See* Ex. A at ¶¶6-8; Ex. B at ¶¶5-15. Accordingly, the district court's erroneous, overbroad, coercive order irreparably harms the government and threatens the public interest. The Court should stay it immediately.

* * *

The Supreme Court has twice made clear that the appropriate status quo while these issues are on appeal is to allow DHS to apply its Guidance to execute third-country removals. *D.V.D. I*, 145 S. Ct. 2153; *D.V.D. II,* 145 S. Ct. 2627. There is no meaningful difference between the issues presented in this appeal and the preliminary injunction appeal for purposes of the instant stay motion. This Court should stay the district court's Order for that reason alone—and at the very least grant an administrative stay to permit time for the government to seek Supreme Court review. *See id.; N.I.H. v. American Public Health Assn.,* 145 S. Ct. 2658, 2665 (2025) (Gorsuch, J., concurring).

CONCLUSION

The Court should grant a stay pending appeal. If the Court denies a stay, it should so rule by March 12, 2026, and it should grant a 15-day stay to permit the government to seek relief from the Supreme Court.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

MATTHEW P. SEAMON
Acting Assistant Director

/s/*Mary L. Larakers*
MARY L. LARAKERS
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) and the Court's order granting Defendants' request to enlarge the word limit by 1,500 words, because the motion contains 6,592 words. The motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 2016 in proportionally spaced 14-point Times New Roman typeface.

/s/ Mary L. Larakers
MARY L. LARAKERS

CERTIFICATE OF SERVICE

I, Mary Larakers, Senior Litigation Counsel, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ *Mary L. Larakers*
Mary L. Larakers
Senior Litigation Counsel

Dated: March 5, 2026

Exhibit A

DECLARATION OF SECRETARY OF STATE MARCO RUBIO

I, Marco Rubio, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Secretary of State of the United States and head of the United States Department of State, an Executive Department of the United States. *See* 22 U.S.C. § 2651. As Secretary of State, I am the President's chief foreign affairs advisor. I carry out the President's foreign policy through the State Department and the Foreign Service of the United States. *See* 22 U.S.C. § 2651a.

2. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, reasonable inquiry, and information obtained from various records, systems, databases, State Department employees, and information portals maintained and relied upon by the United States Government in the regular course of business, and on my evaluation of this information.

3. The purpose of this Declaration is to confirm, in my capacity as Secretary of State and head of the Department of State, that allowing the District Court's February 25, 2026, order (the "Order") to take effect while the appeal of that Order is pending before the First Circuit will cause significant and irreparable harm to U.S. foreign policy.

4. The District Court's Order set aside the Department of Homeland Security's March 30, 2025 memorandum, titled "Guidance Regarding Third Country Removals," and Immigration and Customs Enforcement's July 9, 2025 memorandum, titled "Third Country Removals Following the Supreme Court's Order in *Department of Homeland Security v. D.V.D.*, No. 24A1153 (U.S. June 23, 2025)."

5. Under these policies, the Department of Homeland Security ("DHS") can remove an alien to a third country without further procedures if the United States has obtained diplomatic

assurances that the aliens will not be persecuted or tortured and if the Department of State determines those assurances to be credible.

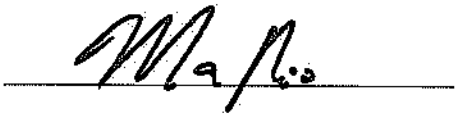
6. The Department of State has already negotiated, and is continuing to negotiate, with third countries to obtain diplomatic assurances pursuant to these policies in arrangements accepting the removals of illegal aliens from the United States. These negotiations often take several weeks or months to conclude because negotiators must carefully consider nuanced diplomatic relations and varied policy objectives specific to each country, including issues beyond migration. If the Order is not stayed, these negotiations will be derailed and any momentum gained will be lost as our negotiators will have to pivot to explain the additional processes and time required to remove illegal aliens to third countries under the Order. Even though the Order itself would not set aside any resulting arrangements or mean that United States cannot send illegal aliens to third countries, allowing the Order to take effect will cause our foreign partners to question the legitimacy of our policies and whether the United States will follow through on its commitments. We cannot simply pause these negotiations while the First Circuit considers the appeal and if the First Circuit overturns the District Court's Order, we may never be able to get our foreign partners back to the negotiating table, even when we are now on the cusp of finalizing arrangements with certain partners to accept third-country nationals from the United States.

7. Moreover, the State Department has already spent significant time and resources to conclude arrangements intended to meet these policies. The states that have concluded these arrangements are expecting us to work with them to remove third-country aliens from the United States and to collaborate in the fight against illegal migration. Allowing the Order to take effect will irreparably harm our relations with these states because DHS will not be able to follow through on its commitments to conduct removals without undertaking additional processes, causing

significant delays. Our foreign partners, in turn, will have to revise their plans to receive these aliens on a delayed schedule, frustrating their preparations and causing them to question our ability to meet our commitments.

8. It is therefore critical that these policies be allowed to remain in place while the appeal of the District Court's Order is pending.

Executed this 5th day of March 2026.



Marco Rubio
Secretary of State

Exhibit B

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

D.V.D., *et al*.,
Individually and on behalf of all others similarly situated,

Plaintiffs,

v.

U.S. Department of Homeland Security, *et al*.,

Defendants.

DECLARATION OF JOHN A. SCHULTZ

I, John A. Schultz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Deputy Assistant Director (DAD) for the Removal Management Division (RMD) (South) with U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I have held this position since June 2024. I have been employed in various positions with ICE ERO since April 2003.
2. The RMD is located at ICE Headquarters in Washington, D.C. and provides guidance and assistance to ICE officers working to coordinate the removal of aliens who have been ordered removed. The RMD collaborates with embassies and consulates, as well as with interagency and international networks, to facilitate the efficient removal of aliens from the

United States, provides nationwide post-order custody review (POCR) guidance, implements policy and procedures, and is responsible for providing case management support for aliens subject to a final order of removal. The RMD manages and oversees all aspects of the removal process to more than 170 countries around the world.

3. As the DAD RMD South, I am responsible for the day-to-day operations regarding the removal of individuals from the United States pursuant to ICE's enforcement mission, and for ensuring that this mission is conducted safely and within the Agency's priorities. I advise the ERO field offices on the coordination of removals, including the nationwide management of post-order custody guidance, policy, and procedures. I coordinate efforts between ERO and the U.S. Department of State's (DOS) domestic and international personnel to ensure that all efforts are made to gain compliance from uncooperative countries in ICE's efforts to effectuate the timely removal of those aliens with final orders of removal. I provide this declaration based on my personal knowledge, belief, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information maintained and relied upon by DHS in the regular course of business.

4. ICE effectuates removals pursuant to final orders of removal issued under the Immigration and Nationality Act (INA). In the vast majority of cases, aliens are removed to their country of nationality. However, in some circumstances ICE removes aliens to a third country pursuant to statutory authority and consistent with applicable law, regulations, and the United States' international obligations—including aliens who have been ordered removed, but received protection under the Convention Against Torture (CAT) or statutory withholding or removal.

Country-Specific Protection Does Not Confer a Permanent Right of Residence in the United States

5. Protection under the CAT and statutory withholding of removal are country-specific in nature. These protections prohibit removal to a specific country or countries where the alien faces a cognizable risk of persecution or torture. They do not confer any status and are not a license to remain in the United States permanently or indefinitely. The Government retains the authority and obligation to execute the order of removal to an alternative country. Otherwise, country-specific protection would serve as an effective bar to removal under all circumstances.

6. ICE currently maintains custody of a significant population of aliens who, despite being subject to final orders of removal, have been granted statutory withholding of removal or protection under the CAT, thereby precluding their removal to the country designated by the immigration court. As a direct consequence of that protection, these aliens cannot be lawfully removed to the designated countries, most often their countries of origin, not because those countries refuse to accept them, but because the law of the United States prohibits their return to the country from which they obtained protection. For this population, third country removal is not one option among several--it is the only option that exists to effectuate the removal order and remove the alien, consistent with United States law. Third country removal is the only mechanism by which ICE can simultaneously honor its two key legal obligations: the obligation not to return individuals to a country from which they have been granted protection, and the obligation to enforce a final order of removal. The practical consequence of this legal framework is that an alien who has been granted withholding of removal or protection under the CAT cannot be removed to

their home country by operation of law and therefore can only be removed through a third-country arrangement.

Recalcitrant Countries and the Operational Necessity of Third-Country Removal Agreements

7. Another impediment to ICE's enforcement of United States' immigration law is the practical reality of recalcitrant countries: nations that refuse, delay, or obstruct the repatriation of their nationals, particularly criminal aliens, subject to orders of removal.
8. Additionally, for aliens from such recalcitrant countries who have also received country-specific protection barring removal thereto, the Government confronts a compound enforcement barrier: it cannot remove the alien to the designated country of removal by virtue of a withholding or CAT grant, and it faces obstruction or outright refusal from the alien's country of origin. Under such circumstances, third-country removal agreements represent the only lawful, constitutionally sound mechanism to resolve this enforcement impasse.
9. ICE systems and databases indicate that approximately 559 aliens are currently in ICE custody pending removal to a third country. This population includes approximately 139 aliens convicted of serious offenses such as murder, rape, child sexual abuse, armed robbery, and aggravated assault. Systems also indicate that there are approximately 7,620 non-detained aliens with final orders of removal but granted statutory withholding or CAT protection from removal to the designated countries, out of which approximately 1,293 are convicted criminals. Many individuals within this population have already served their criminal sentences.
10. Under legal constraint, the Government may not detain aliens indefinitely where there is no significant likelihood of removal in the reasonably foreseeable future. Accordingly,

absent the availability of third-country removal, ICE is legally compelled to release these individuals into the United States, including the above-mentioned criminals who present identifiable public safety risks. These individuals are not hypothetical or low-level offenders. Many have committed violent, sexual, and other heinous crimes. They are removable and subject to an administratively final order of removal. The sole obstacle to their departure from the United States, and thus the protection of U.S. citizens, is the absence of a country willing to accept them consistent with applicable law, a gap that third-country removal agreements are designed to precisely address.

11. More recently, ICE, in close coordination with the DOS and foreign partner governments, has removed approximately 103 aliens with final orders of removal to countries other than their countries of origin where their home countries refused repatriation or when extraordinary public safety considerations so required. These missions represented some of the most operationally complex and diplomatically significant removal efforts. Through the extraordinary cooperation and utilizing agreements with the governments of South Sudan, Eswatini, Rwanda, Ghana, Cameroon and Equatorial Guinea, ICE has successfully removed from the United States aliens who, absent these agreements, would have remained in the United States indefinitely, not because they were entitled to remain, but because no country would accept them.

12. Among those removed through these third-country missions were individuals whose criminal records included convictions for first-degree murder, the rape of minors, repeated violent sexual assaults, and other violent felonies. Specifically, these missions included twenty-three individuals convicted of murder, attempted murder or manslaughter, six individuals convicted of rape or sexual assault, three individuals convicted of indecent and

lewd acts with children under the age of sixteen, to include rape of a child with force, and four individuals convicted of other violent felonies. These are convictions entered by courts in the United States for crimes committed against people living in communities across the country. These individuals served their criminal sentences and, under ordinary circumstances, would have been released directly back into the United States population with no pathway for removal. The threat and danger posed by these aliens is not theoretical. The worst of the worst offenders removed through these missions include individuals with records of extreme depravity. These are not people who pose some abstract or speculative danger. They are people who already demonstrated through their convictions in the U.S. justice systems that they are willing and capable of committing acts of severe violence against innocent people.

13. ICE has also established a third-country removal pathway to Mexico, the country that has accepted the most third-country removals. These removals take place regularly, and each ICE field office along the southwest border that processes third-country removals to Mexico removes a varying number of aliens each week through the corresponding port-of-entry with Mexico. Since January 21, 2025, ICE has removed 7,257 aliens to Mexico as third-country removals.

14. A judicial ruling that would require more processes that goes beyond Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, would greatly hinder DHS's ability to conduct third-country removals. The length of time of Immigration Court proceedings in the Executive Office of Immigration Review, including the appellate process at the Board of Immigration Appeals, is lengthy. Currently, ICE elevates names of potential aliens through the Department of

State to the receiving third-country based on that country's nominating criteria. ICE typically receives final confirmation from the receiving third-country only a short time before the intended removal flight based on the terms of the negotiated agreement. Requiring a reopening of Immigration Court proceedings automatically in the Executive Office of Immigration Review would not be operationally feasible given the time constraints from acceptance by the third-country to the removal mission. Requiring a reopen of Immigration Court proceedings prior to the alien's acceptance by the third-country would also not be operationally feasible and potentially futile as these aliens may not even be accepted by the third-country. The swift and dynamic nature of the third-country removal negotiations mandates the efficient process as developed in the Secretary of Homeland Security Kristi Noem's March 30, 2025 memorandum, *Guidance Regarding Third Country Removals*, which still gives the aliens appropriate process. Such an additional requirement threatens to severely disrupt, and in some cases, altogether foreclose, the ICE's ability to carry out removals. Furthermore, the logistical infrastructure underlying third-country removals is similarly fragile. Removal operations require the coordination of aircraft, detention space, escort personnel, and receiving-country logistics, all of which must be arranged in advance. These resources are not indefinitely available. Additionally, providing individualized process to each alien prior to removal, in addition to the already afforded process under existing statutory and regulatory frameworks, will create an administrative bottleneck that will strain agency resources and impose compounding delays across already complex enforcement priorities. The cumulative effect will be to render the third-country removal program functionally inoperable through the accumulated weight of procedural delay.

15. If ICE's authority to remove aliens to third countries becomes operationally burdensome, approximately 8,179 aliens—including almost 1,432 convicted criminals—would likely remain in the United States, contrary to current immigration law and enforcement priorities. The practical consequence is that the Government will be compelled to release into American communities a population of convicted criminal aliens who cannot be removed to their countries of origin and for whom no third-country option exists. The data in this declaration makes clear the magnitude of that risk. Furthermore, a ruling of this nature would also strip ICE of one of the only remaining enforcement tools available for the most dangerous segment of removable aliens. Third-country removals are, for a critical subset of the most dangerous removable aliens, the only such pathway that exists.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the 5th day of March, 2026

JOHN A SCHULTZ

Digitally signed by JOHN A SCHULTZ
Date: 2026.03.05 20:47:26 -05'00'

John A. Schultz
Deputy Assistant Director
Removal Division
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Exhibit C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
CHELMSFORD IMMIGRATION COURT

Respondent Name:
[redacted]

To:
[redacted]

A-Number:
[redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
02/02/2026

ORDER OF THE IMMIGRATION JUDGE

☑ Respondent ☐ the Department of Homeland Security has filed a motion to reopen these proceedings. Upon reading and considering the motion, and any opposition from the non-moving party, the motion is ☑ granted ☐ denied for the following reason(s):

- ☐ The motion is untimely and fails to meet any exceptions. *See* 8 C.F.R. § 1003.23(b)(1),(4).
- ☐ The motion is numerically barred and fails to meet any exceptions. *See* 8 C.F.R. § 1003.23(b)(1),(4).
- ☐ The moving party failed to provide evidence demonstrating changed circumstances that is material and that was unavailable or could not have been discovered or presented at the previous proceedings. *See* 8 C.F.R. § 1003.23(b)(4)(i).
- ☐ The moving party failed to submit the appropriate application for relief and any accompanying documents. *See* 8 C.F.R. § 1003.23(b)(3).
- ☐ The Respondent has been removed or otherwise departed from the United States. *See* 8 C.F.R. § 1003.23(b)(1).
- ☑ Other:

The Court will find that the Respondent's motion is timely because he has established changed country conditions due to DHS' Notice of Removal to Cameroon. Respondent's Motion to Reopen at 83. In Matter of A-S-M, 28 I&N Dec. 282 (BIA 2021), the BIA held that where the
Department of Homeland Security states that an applicant may be removed to a country pursuant to section 241(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2) (2018), the applicant may seek withholding of removal from that country in withholding-only proceedings, even if that country is different from the country of removal that was originally designated in the reinstated removal order on which the withholding-only proceedings are based.

Similarly, in these removal proceedings in the present case, the Court will find that the Respondent may seek protection from removal to Cameroon. Additionally, the Respondent has filed the appropriate application for relief at page 54, and presented his affidavit at page 82, and an expert affidavit at page 108 of the motion in support of his claim of fear of return to Cameroon. Since the Respondent was only recently given notice of DHS' intent to remove him to Cameroon, the Court finds that this evidence is material and was not previously available at the merits hearing on March 13, 2025, because Cameroon was not designated as a country of removal at that hearing.

Based on the foregoing, the Court will grant the Respondent's Motion to Reopen.

Immigration Judge: Smith, Natalie 02/02/2026

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Respondent Name : [redacted] A-Number : [redacted]

Riders:

Date: 02/02/2026 By: [redacted] Court Staff

Exhibit D

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOSTON IMMIGRATION COURT

Respondent Name: [redacted]

To: [redacted]

A-Number: [redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
12/18/2025

ORDER OF THE IMMIGRATION JUDGE

☑ Respondent ☐ the Department of Homeland Security has filed a motion to reopen these proceedings. Upon reading and considering the motion, and any opposition from the non-moving party, the motion is ☑ granted ☐ denied for the following reason(s):

- ☐ The motion is untimely and fails to meet any exceptions. *See* 8 C.F.R. § 1003.23(b)(1),(4).
- ☐ The motion is numerically barred and fails to meet any exceptions. *See* 8 C.F.R. § 1003.23(b)(1),(4).
- ☐ The moving party failed to provide evidence demonstrating changed circumstances that is material and that was unavailable or could not have been discovered or presented at the previous proceedings. *See* 8 C.F.R. § 1003.23(b)(4)(i).
- ☐ The moving party failed to submit the appropriate application for relief and any accompanying documents. *See* 8 C.F.R. § 1003.23(b)(3).
- ☐ The Respondent has been removed or otherwise departed from the United States. *See* 8 C.F.R. § 1003.23(b)(1).
- ☑ Other:

The Court will find that the Respondent's motion is timely because he has established changed country conditions due to DHS' Notice of Removal to Mexico. Respondent's Motion to Reopen at 77. In Matter of A-S-M, 28 I&N Dec. 282 (BIA 2021), the BIA held that where the Department of Homeland Security states that an applicant may be removed to a country pursuant to section 241(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2) (2018), the applicant may seek withholding of removal from that country in withholding-only proceedings, even if that country is different from the country of removal that was originally designated in the reinstated removal order on which the withholding-only proceedings are based. Similarly, in these removal proceedings in the present case, the Court will find that the Respondent may seek protection from removal to Mexico. Additionally, the Respondent has presented an expert affidavit at page 97 of the motion in support of his claim of fear of return to Mexico. Since the Respondent was only recently given notice of DHS' intent to remove him to Mexico, the Court finds that this evidence is material and was not previously available at the merits hearing in 2019 because Mexico was not designated as a country of removal at that hearing. Based on the foregoing, the Court will grant the Respondent's Motion to Reopen.

12/18/25
DATE
INITIALS: LC
IMMIGRATION JUDGE REVIEWED

Immigration Judge: Masters, Todd 12/18/2025

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To: [ ] Alien | [ ] Alien c/o custodial officer | [M] Alien atty/rep. | [M] DHS

Respondent Name : [redacted] | A-Number : [redacted]

Riders:

Date: 12/19/2025 By: [redacted] Court Staff

[DETAINED] A# [redacted]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS

In the Matter of:	
[redacted]	**A#:** [redacted]
In Removal Proceedings	

RESPONDENT'S STATUTORY MOTION TO REOPEN AND, IN THE ALTERNATIVE, MOTION FOR SUA SPONTE REOPENING

Upon consideration of Respondent's Motion to Reopen, it is HEREBY ORDERED that the motion be:

X **GRANTED** ____ **DENIED** because:

___ DHS does not oppose the motion
___ Good cause has been established for the motion
___ The court agrees with the reasons stated in the opposition to the motion
___ The motion is untimely per: _____
X Other: see attached order

Dated this 18th day of December, 2025

Signed,

Hon. Judge Todd Masters