

1 RACHEL C. HERNANDEZ
2 Acting United States Attorney
3 District of Arizona
4 KATHERINE R. BRANCH
5 Assistant U.S. Attorney
6 Arizona State Bar No. 025128
7 Two Renaissance Square
8 40 North Central Avenue, Suite 1800
9 Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
Email: Katherine.Branch@usdoj.gov
Attorneys for Respondents

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

12 Santos Maradiaga-Villalta,
13
14 Petitioner,

15 v.

16 Kristopher Kline, et al.,
17
18 Respondents.

No. CV-25-0351-PHX-SMB

**RESPONSE TO APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

18 Respondents hereby respond in opposition to Petitioner's Application for
19 Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction
20 (Doc. 13). This a habeas action in which Petitioner, a citizen of Honduras subject to a final
21 order of removal, alleges that his immigration detention has become prolonged and his
22 removal to Honduras not reasonably foreseeable, and seeks an order directing United States
23 Immigration and Customs Enforcement ("ICE") to release him from detention. Doc. 3 at
24 14. Petitioner has now filed an Application for Temporary Restraining Order, in which he
25 seeks an order: (1) enjoining his removal to Mexico until an asylum officer and
26 immigration judge adjudicate his withholding of removal to Mexico claim filed on
27 February 25; (2) requiring Respondents to provide notice to him in advance of his removal
28 to any other third country; and (3) enjoining his removal to any third country until he has

1 had adequate notice and opportunity to contest removal to that country. *See* Doc. 13 at 2.
2 Respondents oppose the Application because the Court lacks jurisdiction to enjoin
3 Petitioner's removal.

4 **I. Petitioner Is Unlikely to Succeed on the Merits and the Application Is**
5 **Unnecessary.**

6 As Petitioner acknowledged in his Application, his potential removal to Mexico has
7 been delayed pending resolution of his fear claim. *See* Doc. 13 at 2 ("While his deportation
8 officer indicated at 7:44am this morning that she had requested that Mr. Maradiaga-Villalta
9 not be removed to Mexico . . . she will be out of the office the rest of the day and it is
10 unclear what effect her request will have."). The deportation officer's action was taken
11 pursuant to the statutes and regulations governing removal—specifically, 8 C.F.R.
12 § 241.8(e), which provides that when an alien whose prior order of removal has been
13 reinstated expresses a fear of returning to the country designated in that order, "the alien
14 shall be immediately referred to an asylum officer for an interview to determine whether
15 the alien has a reasonable fear of persecution or torture pursuant to § 208.31 of this
16 chapter." Thus, once Petitioner expressed a fear of being removed to Mexico, his removal
17 was delayed so his fear claim could be heard by an asylum officer. If the asylum officer
18 denies Petitioner's fear claim, he can ask that the asylum officer's negative fear decision
19 be reviewed by an immigration judge pursuant to 8 C.F.R. § 208.31(f), (g). If the
20 immigration judge affirms the asylum officer's negative fear finding, Petitioner may not
21 apply for relief and may not seek review before the Board of Immigration Appeals. 8 C.F.R.
22 § 208.31(g)(1). If the immigration judge affirms the negative fear decision, the only avenue
23 for review is to the Court of Appeals. *Alonso-Juarez v. Garland*, 80 F.4thA 1039, 1045
24 (9th Cir. 2023) (citing *Alvarado-Herrera v. Garland*, 993 F.3d 1187, 1191 (9th Cir. 2021)).
25 Unless a stay is issued by the Court of Appeals, removal may proceed. 8 C.F.R.
26 § 1208.31(g)(1).

27 If the asylum officer makes a negative fear determination, but the immigration judge
28 disagrees and determines that the Petitioner has a reasonable fear of persecution or torture
if removed to Mexico, Petitioner can submit an Application for Asylum and for

1 Withholding of Removal, which is then considered by the immigration judge de novo. *Id.*
2 § 1208.31(g)(2). If the immigration judge denies withholding, Petitioner can appeal the
3 denial to the Board of Immigration Appeals. *Id.* at § 1208.31(g)(2)(ii). Since ICE cannot
4 remove Petitioner until the process outlined above is complete, this Application and the
5 requested injunction are unnecessary.

6 **II. The Court Lacks Jurisdiction to Enjoin Petitioner's Removal.**

7 Under 8 U.S.C. § 1252(g), “no court shall have jurisdiction to hear any cause or
8 claim by or on behalf of any alien arising from the decision or action by the Attorney
9 General to commence proceedings, adjudicate cases, or execute removal orders against any
10 alien under this chapter.” The “discretion to decide *whether* to execute a removal order
11 includes the discretion to decide *when* to do it. Both are covered by [§ 1252(g)].” *Rauda v.*
12 *Jennings*, 55 4th 773, 777 (9th Cir. 2022) (citation omitted).

13 Here, Petitioner challenges the execution of his removal order. Specifically, he
14 seeks to enjoin the government from removing him to Mexico until his fear claim is heard
15 and from removing him to any third country without permitting him to challenge his
16 removal to that country—in other words, enjoining “action by the Attorney General to . . .
17 execute removal orders against [Petitioner].” 8 U.S.C. § 1252(g). “Congress has explicitly
18 precluded [the courts’] review of this claim.” *Rauda*, 55 4th at 777 (affirming the district
19 court’s denial of a temporary restraining order sought in a habeas petition, noting: “The
20 execution of his removal order is precisely what Matias challenges here. Matias seeks to
21 enjoin the government from removing him—or in other words, enjoin ‘action by the
22 Attorney General to . . . execute removal orders against [Matias].’ Congress has explicitly
23 precluded our review of this claim.”) (quoting 8 U.S.C. § 1252(g)); *see also Dep’t of*
24 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 126 (2020) (noting that the “core” of
25 federal habeas relief is release from unlawful executive detention, not the right to remain
26 in the United States).

27 **III. Conclusion.**

28 The Court lacks jurisdiction to enjoin Petitioner’s removal to Honduras, to Mexico,

1 or to any other country, but even if the Court had such jurisdiction, it should not exercise
2 it here since Petitioner will not be removed pending resolution of his fear claim. Further,
3 nothing in the Application should enjoin Petitioner's removal to Honduras at such time as
4 his travel documents become available.

5 RESPECTFULLY SUBMITTED February 27, 2025.

6 RACHEL C. HERNANDEZ
7 Acting United States Attorney
8 District of Arizona

9 s/ Katherine R. Branch
10 KATHERINE R. BRANCH
11 Assistant United States Attorney
12 *Attorneys for Respondents*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28