

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02287-CNS

JOSE ALBERTO SANCHEZ,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General, in her official capacity,
ERNESTO SANTACRUZ, U.S. Immigration & Customs Enforcement Field Office
Director for the Colorado Field Office, in his official capacity,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official
capacity, and
JOHNNY CHOATE, Warden of GEO Group Aurora Inc, in his official capacity,

Respondents.

**RESPONSE TO PETITIONER'S EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION AND STAY OF ADMINISTRATIVE ACTION**

INTRODUCTION

Petitioner Sanchez has entered this country unlawfully several times, has committed a serious crime here, and is removable under a valid final removal order. For the last five weeks, he has been in U.S. Immigration & Customs Enforcement (ICE) detention pending his removal from the United States. He has filed this action as a habeas case, purportedly challenging whether his detention is lawful. But in his emergency motion for a temporary restraining order (TRO) and preliminary injunction, ECF No. 7, he does not truly challenge his detention; rather, he asks the Court to stop his removal unless, in the event Respondents arrange to remove him to a third country under the statutory provisions permitting such removals, they provide him additional process before doing so.

The Court should deny Sanchez's motion. He is not likely to succeed on the merits of his habeas claim because his detention pending removal is lawful. And he cannot pursue the relief he seeks in this Court: he is a member of a certified non-opt-out-class pursuing the same relief—additional process before a third-country removal—in the District of Massachusetts. Although the District Court there granted preliminary relief to the class, the Supreme Court stayed that relief, and the class remains certified. Sanchez cannot perform an end-run around the non-opt-out class action, nor around the Supreme Court's preliminary relief decision, by filing a habeas action seeking the same relief in this District. He also has not shown irreparable harm or that the equities favor issuing the injunction he seeks. Accordingly, Sanchez's emergency motion for a TRO and preliminary injunction should be denied.

BACKGROUND

I. Sanchez's immigration history.

Sanchez is a native and citizen of Mexico. ECF No. 1-1 at 2 (Immigration Judge's decision and order, dated July 23, 2019). In the 1990s, he twice entered the United States without inspection, returning to Mexico when he was not in the United States. *Id.* In 2000, he was removed to Mexico under a final removal order. *Id.*; *see also* Ex. 1 ¶¶ 4–6 (Decl. of Deportation Officer (DO) Aaron Johnson) (explaining the circumstances of Sanchez's removal in 2000); Ex. 1 Attach. A (removal order). He returned in 2006, again unlawfully. ECF No. 1-1 at 1. In 2009, Police confiscated drugs from his home in Virginia—drugs that Sanchez claims were obtained from the Los Zetas cartel (a cartel in Mexico) by someone else. *Id.* at 4. Sanchez has also claimed that cartel members have threatened to kill him over the lost drugs if he returns to Mexico. *Id.*

In 2015, Sanchez was convicted in Virginia of possessing cocaine with the intent to distribute. *Id.* at 7–8. He went to prison in Virginia. Ex. 1 ¶¶ 9–10 (Johnson Decl.). In August 2018, while serving his sentence, Sanchez's final removal order from 2000 was reinstated. *Id.*; *see also* Ex. 1 Attach B (decision reinstating removal order). Sanchez claimed he feared returning to Mexico. Ex. 1 ¶ 12 (Johnson Decl.). An asylum officer determined that his fear was not reasonable. *Id.* ¶ 14. Sanchez then sought review from an Immigration Judge. *Id.* Meanwhile, in November 2018, upon his release from prison, the Department of Homeland Security (DHS) took Sanchez into custody. *Id.* ¶ 11.

In July 2019, after a hearing, the Immigration Judge found it more likely than not that Sanchez would face torture or death from Los Zetas if removed to Mexico. ECF

No. 1-1 at 16. Due to his criminal conviction, Sanchez was ineligible for withholding of removal under the U.N. Convention Against Torture (CAT), but the Immigration Judge granted him deferral of removal under the CAT. *Id.* DHS then sought to remove him to a third country, without success. Ex. 1 ¶ 23 (Johnson Decl.). A few months later, in November 2019, Sanchez was released from detention under an Order of Supervision. *Id.* ¶ 24. He remained in the United States and checked in annually with DHS. *Id.* ¶ 25.

On July 7, 2025, at his annual check-in, Sanchez was detained pending his removal to a country other than Mexico. *Id.* ¶ 27. DHS has solicited three possible countries for removal. ECF No. 7-1 (July 24, 2025, email from Aaron Johnson to Petitioner's counsel). It has not yet determined if one of those countries will accept Sanchez. Ex. 1 ¶ 31 (Johnson Decl.).

II. The *D.V.D.* action in the District of Massachusetts.

In March 2025, four plaintiffs instituted a putative class action in the District of Massachusetts challenging their potential removals to third countries. *D.V.D. v. DHS*, No. 25-cv-10676-BEM (D. Mass.) (hereinafter, "*D.V.D.*"), ECF No. 1. The *D.V.D.* plaintiffs seek a declaratory judgment and relief under the Administrative Procedure Act, not habeas relief. *Id.* at 31–37. They moved for an emergency TRO and preliminary injunction. *D.V.D.*, ECF Nos. 6 (TRO motion); 7 (memorandum in support). The *D.V.D.* court granted the TRO motion on March 28, 2025. *D.V.D.*, ECF No. 34.

On April 18, 2025, the court in *D.V.D.* issued an order certifying a class under Fed. R. Civ. P. 23(b)(2). *D.V.D.*, ECF No. 64. The class includes:

All individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA (including

withholding-only proceedings) who DHS has deported or will deport on or after February 18, 2025, to a country (a) not previously designated as the country or alternative country of removal, and (b) not identified in writing in the prior proceedings as a country to which the individual would be removed.

Id. at 23; *see also id.* at 36 (summarizing the claim in the case as a “challenge [to] a policy or practice that impacts all putative class members: failing to provide meaningful notice and opportunity to present a fear-based claim before executing removal to a third country”).

In the same order, the *D.V.D.* court entered a preliminary injunction requiring DHS, before removing a class member to a third country, to provide written notice of the third country identified for removal, an opportunity to raise the issue of fear of removal to that country, and other process. *Id.* at 46–47.

On June 23, 2025, the Supreme Court stayed the preliminary injunction pending appeal in the First Circuit Court of Appeals. *DHS v. D.V.D.*, 145 S. Ct. 2153 (2025) (*per curiam*). The class certification in *D.V.D.* remains in effect notwithstanding the Supreme Court’s stay of the preliminary injunction.

III. Statutory and regulatory framework: removal.

A. Removal proceedings.

The Immigration & Naturalization Act (INA) authorizes the removal of classes of aliens from the United States—specifically, aliens who are “inadmissible.” 8 U.S.C. §§ 1182, 1227. An inadmissible alien who has never previously been removed may attempt to show that they should not be removed via removal proceedings under 8 U.S.C. § 1229a. Removal proceedings can include a hearing before an Immigration

Judge, an appeal to the Board of Immigration Appeals, and review in the Courts of Appeals. *Id.* §§ 1229a, 1252.

In removal proceedings, one reason removal may be “withheld” or “deferred” is to uphold the United States’s obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). 8 U.S.C. § 1231 note; 8 C.F.R. §§ 1208.16–1208.18. The alien seeking withholding or deferral of removal based on the CAT must “establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Id.* § 1208.16(c)(2) (withholding of removal); *see also id.* § 1208.17(a) (deferral of removal).

B. Withholding-only proceedings for aliens previously removed under a final removal order.

Congress has established a streamlined process for removing aliens who have reentered the country unlawfully after previously being removed from the United States under a final order of removal. For these aliens, “the prior order of removal is reinstated from its original date,” and DHS¹ may “at any time” effectuate removal “under the prior order.” 8 U.S.C. § 1231(a)(5). The reinstated order “is not subject to being reopened or reviewed,” and the alien “is not eligible and may not apply for any relief” from that order. *Id.*

An alien with a reinstated removal order, however, may still seek withholding or deferral of removal under the CAT through a regulatory process. 8 C.F.R. §§ 208.31,

¹ Congress has transferred enforcement of certain INA provisions from the Attorney General to the Secretary of DHS. *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

1208.31; *see also Clarification Regarding Bars to Eligibility During Credible Fear and Reasonable Fear Review*, 89 Fed. Reg. 105392-01, 105395 (Dec. 27, 2024) (interim final rule describing the “reasonable fear screening” process under the CAT).² When the reinstated removal order is issued, the alien is referred to an asylum officer for a reasonable fear determination. 8 C.F.R. § 208.31(b). The asylum officer assesses the facts and determines whether torture in the removal country is more likely than not. *Id.* The regulations provide for review of that determination by an Immigration Judge and the Board of Immigration Appeals. *Id.* §§ 208.31(c)–(g), 1208.31(e), (g). This review is known as “withholding-only proceedings.” *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). An order issued by the Immigration Judge or the Board of Immigration Appeals in withholding-only proceedings is separate from the alien’s removal order. *Id.* at 539 (2021) (observing that “removal orders and withholding-only proceedings address two distinct questions,” and, “[a]s a result, they end in two separate orders”).

C. Third country removal.

Congress has provided a framework for determining where aliens may be removed. 8 U.S.C. § 1231(b). An alien ordered removed “may designate one country to which the alien wants to be removed.” *Id.* § 1231(b)(2)(A). In certain circumstances, however, DHS need not remove the alien to their designated country, including where

² *See also* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, § 2242 (Oct. 21, 1998) (directing the Executive to promulgate regulations to implement the United States’ obligations under Article 3 of the CAT); *Regulations Concerning the Convention Against Torture*, 64 Fed. Reg. 8478 (Feb. 19, 1999) (establishing procedures for raising claims for protection under the CAT).

“the government of the country is not willing to accept the alien into the country.” *Id.* § 1231(b)(2)(C)(iii). The next preference is “a country of which the alien is a subject, national, or citizen,” *id.* § 1231(b)(2)(D); followed, if that country is not an option, by a country that has a connection to the alien, *id.* § 1231(b)(2)(E)(i)–(vi). But if removal to each of those countries is “impracticable, inadvisable, or impossible,” the alien may be removed to “another country whose government will accept the alien into that country.” *Id.* § 1231(b)(2)(E)(vii). This is known as “third country removal.”

A grant of withholding or deferral of removal under the CAT as to one country does not bar removal to a different country. The implementing regulations expressly provide that “[n]othing in [the regulations] shall prevent [DHS] from removing an alien to a third country other than the country to which removal has been withheld or deferred.” 8 C.F.R. § 1208.16(f). Thus, “[i]f an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States.” *Guzman Chavez*, 594 U.S. at 536 (emphasis in original).

On March 30, 2025, DHS issued guidance to clarify the process it follows in removing aliens (like Sanchez) who have an outstanding removal order and CAT deferral to a specific third country. Ex. 1 Attach. C (the “March 2025 Guidance”). Before an alien’s “removal to a country that had not previously been designated as the country of removal,” the guidance establishes a two-step process. *Id.* at 1. First, “DHS must determine whether that country has provided diplomatic assurances that aliens removed from the United States will not be persecuted or tortured.” *Id.* If it has, and “if the

Department of State believes those assurances to be credible,” then “the alien may be removed without the need for further procedures.” *Id.* at 1–2.

Second, if assurances have not been provided (or are not believed credible), “DHS will . . . inform the alien of removal to that country.” *Id.* at 2. If the alien then “affirmatively states a fear of removal” to that country, DHS will “refer [the alien] to U.S. Citizenship and Immigration Services (USCIS) for a screening for eligibility for protection under INA § 241(b)(3) and the [CAT] for the country of removal.” *Id.*

III. This action.

On July 24, 2025, Sanchez filed this habeas proceeding. ECF No. 1. In his two-page habeas petition, he claims that his detention “contravenes the protections afforded under the CAT” because “[t]here has been no change in country conditions” in Mexico. *Id.* at 2. Further, he asserts that “he has not been notified of a 3rd country of removal in order to object to or claim a fear if removal to a 3rd country is imminent or contemplated.” *Id.*

A week later, on July 31, Sanchez filed this motion, ECF No. 7, and an accompanying memorandum of law, ECF No. 7-2 (collectively, “motion”). In his motion, he describes his claim not as a challenge to his detention, but as a challenge:

[T]o Defendants’ policy or practice of deporting, or seeking to deport, them to a *third* country . . . without first providing them with notice or opportunity to contest removal on the basis that they have a fear of persecution, torture, or even death if deported to that third country, and [a] challenge to DHS’s February 18, 2025 directive with respect to re-detention without cause.

ECF No. 7-2 at 7 (emphasis in original). The relief he seeks in the motion is not release from detention, but “temporary injunctive relief enjoining Defendants from effecting the

removal of Plaintiff without first providing written notice and an opportunity to apply for statutory withholding and CAT protection before an I[mmigration] J[udge].” *Id.* at 12. In other words, he seeks the same relief sought by the plaintiffs in *D.V.D.* on behalf of the class. Indeed, Petitioner’s emergency TRO motion copies much of the *D.V.D.* plaintiffs’ emergency TRO motion verbatim. *Compare* ECF No. 7-2, with *D.V.D.*, ECF No. 7.

ARGUMENT

I. TRO Standard.

A court may grant a TRO or preliminary injunction only if the moving party makes a four-part showing: (1) a substantial likelihood of succeeding on the merits; (2) irreparable injury if the court denies the injunction; (3) that the threatened injury absent the injunction outweighs the opposing party’s injury under the injunction; and (4) “that the injunction isn’t adverse to the public interest.” *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019). The last two factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Any TRO or preliminary injunction is an “extraordinary remedy.” *Free the Nipple*, 916 F.3d at 797 (citation omitted). Thus, “the right to relief must be clear and unequivocal.” *Beltronics USA, Inc. v. Midwest Inventory Distrib., LLC*, 562 F.3d 1067, 1070 (10th Cir. 2009) (quotation omitted). Here, the factors all indicate that the Court should deny Sanchez’s motion.

II. Sanchez is not likely to succeed on the merits of his habeas claim.

“Habeas has traditionally been a means to secure *release* from unlawful detention.” *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020) (emphasis in original); see

also Kapoor v. DeMarco, 132 F.4th 595, 606 (2d Cir. 2025) (“A district court may grant a writ of habeas corpus when a petitioner is ‘in custody in violation of the Constitution or laws or treaties of the United States.’” (quoting 28 U.S.C. § 2241(c)(3))).

As discussed below, because Sanchez’s detention is lawful, he is unlikely to succeed on the merits of his habeas claim. Indeed, he has not actually framed his TRO motion around custody or release: instead, he asks the Court to order DHS not to remove him to a third country “without first providing written notice and an opportunity to apply for statutory withholding and CAT protection.” ECF No. 7-2 at 12. But the Supreme Court has made plain that courts considering a motion for preliminary relief in a habeas case *must* consider chance of success as to the lawfulness of the *custody*. See *Munaf v. Geren*, 553 U.S. 674, 690–91 (2008) (lower courts erred in granting preliminary injunction in habeas matter without “considering the merits of the underlying habeas petition”). And Sanchez’s custody is lawful.

Further, even if the Court entertained Sanchez’s case as a challenge to his possible removal to a third country, he is unlikely to succeed. For one thing, the Court is precluded from granting him the injunctive relief he seeks because he is a member of the *D.V.D.* class, which is a non-opt-out class, and the Supreme Court itself has stayed the very relief he seeks as to that class. For another, this Court lacks jurisdiction over the types of removal-related decisions Sanchez apparently wishes to challenge. And finally, the process Sanchez will receive under the March 2025 Guidance passes constitutional muster.

A. Sanchez's detention is lawful.

The Supreme Court has recognized that “detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process.” *Demore v. Kim*, 538 U.S. 510, 523 (2003). DHS’s authority for detaining Sanchez stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal, and applies equally to reinstated orders of removal. *Guzman Chavez*, 594 U.S. at 533. The statute requires DHS to detain the alien for 90 days after the removal order becomes final. *Id.* § 1232(a)(1)–(2). This is the “removal period.” *Id.* If the removal period expires without removal taking place, DHS may continue detention as permitted by § 1231(a)(6), which allows detention beyond the removal period for three categories of aliens: (i) those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182; (ii) those subject to removal under certain provisions of 8 U.S.C. § 1227; and (iii) those whom immigration authorities have determined to be a risk to the community or “unlikely to comply with the order of removal.” *Id.*

Sanchez is such an alien. He is inadmissible under § 1182(a)(2)(A)(i)(II) because he was convicted of violating a state law related to a controlled substance—possessing cocaine—and no exception applies. Also, DHS previously determined (in 2019) that he was a risk to the community and posed a flight risk. Ex. 1 ¶ 16 (Johnson Decl.). His detention is therefore lawful under § 1231(a)(6).

Even if § 1231(a)(6) did not apply, Sanchez’s detention would still be lawful. Sanchez was released under an order of supervision. Ex. 1 ¶ 24 (Johnson Decl.). The applicable regulations specify that “[r]elease may be revoked in the exercise of

discretion when,” among other things “[i]t is appropriate to enforce a removal order.” 8 C.F.R. § 241.4(l)(iii). And Sanchez was taken back into custody five weeks ago “to pursue removal.” Ex. 1 ¶ 27 (Johnson Decl.). His detention ensures that he will be on hand when removal arrangements are final and in place. *See Demore*, 538 U.S. at 528 (validating “detention [that] serves the purpose of preventing deportable criminal aliens from fleeing . . . thus increasing the chance that . . . the aliens will be successfully removed”); *Guzman Chavez*, 594 U.S. at 544 (noting that flight risk may be greater for “aliens who reentered the country illegally after removal [and] have demonstrated a willingness to violate the terms of a removal order”). His presence in DHS custody is lawful.

In his motion, Sanchez barely addresses his detention. Citing *Demore* and *Zadvydas v. Davis*, 533 U.S. 678 (2001), he argues only that “because [DHS] ha[s] no mechanism to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country,” his “re-detention . . . is not tied to a lawful removal process.” *See* ECF 7-2 at 9. But the caselaw does not support his position. *Zadvydas* held that habeas relief is available to ensure that “deportation-related detention . . . end[s] within a reasonable time,” 533 U.S. at 698, not that it ends in a particular manner. And in *Demore*, the Court faced a challenge to a statute authorizing detention during removal proceedings *before* an alien is determined removable—an issue suitable for habeas review because success would have ended detention premised on that statute. *See* 538 U.S. at 514–15.

The Supreme Court's recent decision in the Alien Enemies Act (AEA) context, *Trump v. J.G.G.*, 604 U.S. ---, 145 S. Ct. 1003 (2025) (per curiam), also does not support Sanchez's position. The *J.G.G.* petitioners challenged whether they were removable under the AEA at all; and the Supreme Court held that "their claims for relief necessarily impl[ie]d the invalidity of their confinement and removal *under the AEA*." *Id.* at 1005 (emphasis added) (quotation omitted). Here, there is no question that Sanchez is removable under the INA, nor that the INA and the CAT regulations expressly allow third country removal. 8 U.S.C. § 1231(b)(2)(E)(vii); 8 C.F.R. § 1208.16(f); *see also D.B.U. v. Trump (D.B.U. 2)*, No. 1:25-cv-01163-CNS, 2025 WL 1304288, at *5 (D. Colo. May 6, 2025) ("The [AEA] and Proclamation are distinct from the [INA] and Title 8."). Thus, unlike in *J.G.G.*, the core of Sanchez's claim is not a challenge to the validity of the statutory basis for his confinement.

The more apposite case is *Thuraissigiam*. In that case, an unsuccessful applicant for asylum claimed that his removal order was invalid because he had not had "a meaningful opportunity to establish his claims," and he sought "a fair procedure to apply for asylum, withholding of removal, and CAT relief." 501 U.S. at 118. Ruling against the applicant, the Supreme Court held that habeas review cannot be "understood . . . to permit a petitioner to claim the right to enter or remain in a country *or to obtain administrative review potentially leading to that result*." *Id.* at 117 (emphasis added). As in *Thuraissigiam*, Sanchez's claim fundamentally is about obtaining a particular administrative process, not about the lawfulness of his detention. He is thus unlikely to

succeed on the merits of his habeas claim. The Court need proceed no further to deny his motion for preliminary relief.

B. In any event, Sanchez would not succeed on the merits of a claim for the injunctive relief he asserts in his TRO motion.

Even if a habeas petition was a proper vehicle for the injunctive relief Sanchez seeks, he would not succeed on the merits, for several reasons.

Sanchez is a member of the D.V.D. non-opt-out class: This Court cannot grant Sanchez the injunctive relief he seeks because he is a member of the *D.V.D.* non-opt-out class, which is litigating the same issue and seeking the same relief for the entire class. Also, the Supreme Court itself has stayed the relief Sanchez seeks as to the class, and this Court lacks authority to circumvent the Supreme Court's ruling.

"The key" to a non-opt-out class "is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (quotation omitted). A class under Rule 23(b)(2) "does not require that class members be given notice and opt out rights," on the presumptive premise that "the class is mandatory" and "depriving people of their right to sue in this manner complies with the Due Process Clause." *Id.* at 362. Therefore, "class members in [a] Rule 23(b)(2) action[] . . . do not have the alternative of bringing a separate suit." 7AA Charles Alan Wright & Arthur R. Miller, Fed. Practice and Procedure § 1786 (3d ed. updated 2025) (footnote omitted); *see also id.* § 1798.1 (observing that "a single, nationwide class action seems to be the best means of achieving judicial economy" to avoid "multiple, competing . . . actions . . . all directed

toward the same conduct or activities, which are alleged to have caused harm that is . . . national[] in scope” (footnote omitted)).

The Rule 23(b)(2) non-opt-out class certification in *D.V.D.* thus bars Sanchez’s request for relief here. In his TRO motion, Sanchez seeks the same relief for himself that the plaintiffs in *D.V.D.* seek for the class—an order enjoining DHS from removing him to a third country without individualized notice and a chance to apply for CAT protection. ECF No. 7-2 at 12; *see also D.V.D.*, No. 25-cv-10676, ECF No. 7 at 20 (“Plaintiffs request that the court . . . enjoin[] Defendants from removing . . . class members to a third country without first providing them and their counsel, if any, with written notice and an opportunity to apply for CAT protection before an IJ.”). As another district court has recognized, taking up an individual class member’s claim would run afoul of the non-opt-out nature of a Rule 23(b)(2) class action and risk an order that could conflict with the relief (if any) eventually provided to the *D.V.D.* class. *See Ghamelian v. Baker*, Civ. Case No. SAG-25-02106, 2025 WL 2049981, at *3 (D. Md. July 22, 2025) (finding that “[i]n light of [the] [p]laintiff’s apparent class membership [in the *D.V.D.* class], claims relating to his potential third country removal are more appropriately resolved in the *D.V.D.* case and will not be addressed in this Court”).

Equally important, without undoing the *D.V.D.* class certification, the Supreme Court stayed the preliminary injunction issued by the District Court in *D.V.D.* 145 S. Ct. 2153. The ruling signals the majority’s view on the class’s chance of success on the merits. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (to obtain stay pending appeal, applicant must show, among other things, “a fair prospect that a

majority of the Court will vote to reverse the judgment below"). And this Court is bound by the Supreme Court's decisions, meaning it should not provide a *D.V.D.* class member with the very equitable relief that the Supreme Court has denied the *D.V.D.* class. The situation is not unlike the one presented in an AEA case recently decided by this Court, *D.B.U. v. Trump* (*D.B.U. 1*), --- F. Supp. 3d ---, No. 1:25-cv-01163-CNS, 2025 WL 1163530 (D. Colo. Apr. 22, 2025). There, the Court concluded that "[w]here the Supreme Court has prohibited the government from removing members of a putative class . . . the Court must follow suit." *Id.* at *6. Here, the Supreme Court has held that the government is *not* prohibited from removing *D.V.D.* class members to third countries, and the Court likewise must follow the Supreme Court's lead. Thus, because he is a member of the *D.V.D.* class, Sanchez is not likely to succeed on the merits of his claim for equitable relief.

The Court lacks jurisdiction to enjoin Sanchez's removal: To the extent that Sanchez is, in substance, seeking an order staying DHS's effectuation of his removal order, this Court lacks jurisdiction to provide such relief. Under 8 U.S.C. § 1252(g), "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [DHS] to . . . execute removal orders against any alien." This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision." *Id.*

Accordingly, by its terms, this jurisdiction-stripping provision precludes habeas review under 28 U.S.C. § 2241 of claims arising from a decision or action to "execute" a final order of removal. See *Reno v. American-Arab Anti-Discrimination Committee* (AADC),

525 U.S. 471, 482 (1999) (where it applies, § 1252(g) makes habeas relief unavailable). And for Sanchez, an alien with a reinstated removal order, “there is nothing left . . . to do with respect to the removal order other than to execute it.” *Guzman Chavez*, 594 U.S. at 535.

Also, in 8 U.S.C. § 1252(a)(4), Congress lodged “judicial review of *any* cause or claim under the United Nations Convention Against Torture” in the Courts of Appeals, and specifically excluded such claims from habeas review. *See Kapoor*, 132 F.4th at 608 (concluding that § 1252(a)(4) “specifically and unambiguously precludes a court from exercising habeas jurisdiction over [a] CAT claim”). Likewise, 8 U.S.C. § 1252(b)(9) limits “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, *arising from any action taken . . . to remove an alien from the United States* under this subchapter” to “judicial review of a final [removal] order” (emphasis added); and such judicial review must take place in the Courts of Appeals, *id.* § 1252(a)(5). Sanchez thus is also unlikely to succeed on the merits because this Court lacks jurisdiction over his habeas claim.

The process Sanchez will receive is constitutionally adequate: The procedures DHS has adopted for third country removals are described in the March 2025 Guidance. The March 2025 Guidance provides that an alien may be removed to a country that has provided credible diplomatic assurances that aliens removed from the United States will not be persecuted or tortured; or, if such assurances are lacking, following a reasonable fear screening. *See* Ex. 1 Attach. C.

This process satisfies the Due Process Clause's requirements. Under Supreme Court precedent, for inadmissible aliens like Sanchez who entered the country unlawfully, "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."³ *Thuraissigiam*, 591 U.S. at 139 (quoting *Nishimura Ekiu v. United States*, 142 U.S. 641, 660 (1892)). Here, DHS has put a process in place for determining whether Sanchez is likely to face torture in a third country before his removal to that country. This is not a case "in which the Executive has determined that a detainee is likely to be tortured but decides to transfer him anyway," *Munaf*, 553 U.S. at 702, nor even a case where it makes no effort to determine if torture is likely. And "[t]he Judiciary is not suited to second-guess such [Executive] determinations." *Id.*; see also *Kiyemba v. Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) (federal courts "may not question the Government's determination that a potential recipient country is not likely to torture a detainee"). Based on the March 2025 Guidance, Sanchez is unlikely to succeed on his claim that his removal to a third country would occur without adequate process.

In short, because Sanchez is unlikely to succeed on the merits for all the reasons discussed above, the Court should deny his motion for a TRO.

³ Although Sanchez has been present in the United States for years, he is "treated for due process purposes as if stopped at the border" because he entered the country unlawfully. *Thuraissigiam*, 591 U.S. at 139 (quotation omitted).

III. Sanchez has not demonstrated irreparable harm.

When seeking preliminary relief, the plaintiff is “require[d] . . . to *demonstrate* that irreparable injury is *likely* in the absence of an injunction.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (second emphasis in original). “To constitute irreparable harm, an injury must be certain, great, actual[,] and not theoretical.” *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (quotation marks omitted). “Irreparable” harm is more than “serious” or “substantial” harm. *Id.* The injury also must be “of such imminence that there is a clear and present need for equitable relief.” *Schrier v. Univ. Of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (quoting *Heideman*, 348 F.3d at 1189).

Showing irreparable harm “is ‘not an easy burden to fulfill.’” *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016) (quoting *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1258 (10th Cir. 2003)). And the Supreme Court has held that “the burden of removal alone cannot constitute the requisite irreparable injury.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Sanchez has not shown irreparable harm. He claims he may be denied “meaningful notice and opportunity to present a fear-based claim before deportation to a third country.” ECF No. 7-2 at 10. But he has not identified any reason that he may fear torture in any country besides Mexico. *See id.* Further, the only information about grounds for invoking the CAT that he has provided the Court is found in the Immigration Judge’s decision from his withholding-only proceedings. ECF No. 1-1. That decision focuses exclusively on local situations in Mexico—a cartel that believes Sanchez stole

drugs and money, and a problem with a neighbor. *See id.* at 4. As described above, Sanchez's removal order is valid, and removal to a country besides Mexico has long been and remains a lawful option; yet he has provided the Court with no indication that he fears torture anywhere other than Mexico.

Nor, for the reasons discussed above as to his chance of success on the merits, is there irreparable harm if Sanchez is removed to a third country in accordance with DHS's March 30, 2025 guidance, which provides a constitutionally adequate procedural consideration about the chance of torture in a third country. Accordingly, the irreparable harm factor is not met.

IV. The equities do not favor Sanchez.

The public interest in enforcing the immigration laws is significant. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976). This is particularly so where DHS seeks to enforce a removal order, because "in all [removal] cases, deportation is necessary in order to bring to an end *an ongoing violation* of United States law." *AADC*, 525 U.S. at 491 (emphasis in original) (observing that "[p]ostponing justifiable deportation . . . is often the principal object of resistance to a deportation proceeding"). The injunction Sanchez seeks would hinder DHS's enforcement efforts and potentially extend an ongoing violation of law.

The equities favoring Sanchez are less compelling. He points to the cost of detention, ECF No. 7-2 at 11, but that is misdirected: if the injunction he requests were in place, his detention pending removal (under the process he requests) would remain lawful. As noted, he has not identified any countries (besides Mexico) where he believes

he may experience persecution or “chain refoulement”—i.e., subsequent deportation from the third country to Mexico (or a different country where he would likely be tortured). *Id.* And for the reasons discussed above, the immigration laws are currently being “faithful[ly] executed” under DHS’s existing policies. *Id.* The equities favor the government.

* * * * *

At bottom, the preliminary injunction factors—chance of success on the merits, likelihood of irreparable harm, and balance of the equities—align against issuing the injunction Sanchez requests. Accordingly, the Court should deny Sanchez’s emergency motion for a TRO and preliminary injunction.

CONCLUSION

For all the reasons discussed above, Sanchez’s emergency motion for a TRO, preliminary injunction, and stay of administrative action should be denied.

Dated: August 11, 2025

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CERTIFICATE OF SERVICE

I certify that on August 11, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause notice to be delivered electronically to the following individual:

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