

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

ABRAHIM BUSH ABRAHIM MANAGO,

Petitioner,

v.

CRYSTAL CARTER, *et al.*,

Respondents.

Case No. 5:25-cv-03183-JWL

REPLY IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER

INTRODUCTION

In their Response, the Respondents argue that (1) this Court lacks jurisdiction over Mr. Manago's claims and (2) injunctive relief is foreclosed by his inclusion in the class in *D.V.D. v. Dep't of Homeland Sec.* or by the U.S. Supreme Court's staying of the injunction in that case. For the reasons that follow, Respondents are mistaken with respect to both of these arguments. There is no barrier, jurisdictional or otherwise, to this Court's granting of injunctive relief in Mr. Manago's case.

ARGUMENT

I. Respondents' jurisdictional arguments and arguments under *D.V.D.* have been rejected by other courts and should likewise be rejected here.

A. This Court does not lack jurisdiction.

Respondents first argue that this Court has no "jurisdiction over Petitioner's CAT claim." Resp. at 3. It is unclear to what claim Respondents are referring. Mr. Manago's claim is for prolonged detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001) and seeks to enjoin his removal from this district pending resolution of that claim. Nowhere in his Verified Petition or his Motion for Temporary Restraining Order does Mr. Manago raise a claim under the Convention Against

Torture. Indeed, the relief granted to him by the immigration court was not under CAT, but instead withholding of removal under the INA.

Next, Respondents argue that that 8 U.S.C. § 1252(g) strips this Court of jurisdiction to enter a TRO preventing his removal without due process to an unspecified third country. Resp. at 4-5. However, courts have not agreed. In one recent case, for example, a sister court addressed the same issue and noted that the petitioner “does not ask the Court to review the underlying merits of the removal decision. Nor does he ask the Court for a blanket stay of removal. Rather, he asks that he not be unlawfully removed without adequate notice and due process.” *Arostegui-Maldonado v. Baltazar*, -- F. Supp. 3d --, 2025 WL 2280357 (D. Colo. Aug. 8, 2025), at *13 (internal quote marks omitted). The court in that case found that “even assuming Respondents are correct that § 1252(g) would prevent the Court from enjoining [the petitioner’s] removal full stop, it does not preclude it from fashioning the narrow relief that [the petitioner] seeks here: an injunction requiring Respondents to adhere to their non-discretionary obligation to provide [the petitioner] with notice and an opportunity to seek withholding of removal before he is deported to any third country.” *Id.*

B. Nothing in *D.V.D.* or in the Supreme Court’s order staying its injunction bars relief in this case.

Respondents next argue that Mr. Manago is part of a non-opt-out class in *D.V.D. v. U.S. Dep’t of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025), and therefore this Court cannot issue any injunctive relief as it might “conflict with ... the relief” that may eventually be granted in that case, and further argue that the Supreme Court’s stay of the *D.V.D.* court’s classwide injunction prevents relief in this case. Respondents are mistaken on both counts

The Government raised the same arguments recently in a similar case, *Nguyen v. Scott*, -- F. Supp. 3d --, 2025 WL 2419288 (W.D. Wash. Aug. 21, 2025). There, as here, Respondents argued that the petitioner was “not entitled to the relief he seeks because he is a member of the non-opt

out D.V.D. certified class.” *Id.* at *20 (internal quote marks omitted). The *Nguyen* court rejected this argument because the relief sought in *D.V.D.* pertained only to the Convention Against Torture, not withholding of removal under the INA. *Id.* Furthermore, the court noted that the petitioner “may bring his independent claim for injunctive relief because it is not duplicative of the *D.V.D.* litigation” and because “without that opportunity, Petitioner would be left powerless to petition the courts for redress until the *D.V.D.* class action has been fully resolved.” *Id.* at 21 (cleaned up). Significantly, the court also noted that Respondents’ position contradicted their position in *D.V.D.* itself:

In other words, the government is arguing in *D.V.D.* that injunctive relief cannot be granted to the class, and may only be pursued (if at all) through individual cases, while arguing here that Petitioner’s individual claim should be barred because his injunctive claims should be adjudicated as part of the *D.V.D.* class. The contradiction in these arguments further undermines Respondents’ position here. The class certification order in *D.V.D.* does not prevent this Court from adjudicating Petitioner’s claims regarding third-country removal.

Id. In short, this Court should follow the lead of the court in *Nguyen* and reject Respondents’ argument that the existence of the *D.V.D.* class bars relief here.

Next, Respondents argue that the fact that Supreme Court stayed the classwide injunction in *D.V.D.* means Mr. Manago is not entitled to relief here. The court in *Nguyen* also convincingly rejected this argument, noting that, “The Supreme Court did not decide *D.V.D.* on the merits, nor did it even necessarily rule on the class’s likelihood of success on its due process and APA claims.” *Id.* at *22. In short, the court found that “The emergency docket order in *D.V.D.* does not preclude the Court from granting a preliminary injunction here.” *Id.* at *23.

II. The *Winter* factors support a grant of injunctive relief.

In his Memorandum of Law in Support of Motion for TRO, Mr. Manago cites numerous cases from district courts indistinguishable from this one, in which courts have found a likelihood

of success on the merits and have granted injunctive relief. Although Respondents focus on Mr. Manago's likelihood of success on the third-country removal argument in his TRO motion, most district courts have focused instead on the likelihood of success on the underlying *Zadvydas* claim in the habeas petition. *See, e.g., Misirbekov v. Venegas*, -- F. Supp. 3d --, 2025 WL 2201470 (S.D. Tex. Aug. 1, 2025); *Vaskanyan v. Janecka*, 2025 WL 2014208 (C.D. Cal. June 25, 2025); *Ambila v. Joyce*, 2025 WL 1534852 (D. Me. May 28, 2025). Even if this Court looks instead at a likelihood of success on the third-country removal issue, the court's opinion in *D.V.D.* sets out in great detail why Mr. Manago should prevail on that argument.

Respondents apparently do not contest that Mr. Manago faces irreparable harm but instead focus on the balance of equities. Resp. at 9-10. But Mr. Manago has already addressed this in his earlier brief (at 9-10), and respectfully suggests that nothing in the Government's response successfully rebuts his arguments or the authorities he cited.

With respect to a bond, Mr. Manago is an indigent detainee from Sudan, and requiring him to post a bond would represent a significant hardship in his attempt to vindicate his due process rights. However, "the Tenth Circuit has 'held that a trial court has "wide discretion" under Rule 65(c) in determining whether to require security.'" *Fresh Vision OP, Inc. v. Skoglund*, 2024 WL 3534739 (D. Kan. July 24, 2024) (citing *Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202, 1206 (10th Cir. 2003)). Here, since the Government can show no harm to it by granting of an injunction, the Court should exercise its discretion not to require a bond.

CONCLUSION

The Court should enjoin Mr. Manago's removal without adequate notice or process pending the resolution of his habeas case.

Dated: September 4, 2025

Respectfully submitted,

/s/ James D. Jenkins

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed via the Court's CM/ECF system this 4th day of September, 2025, which sent notice of such filing to all parties.

/s/ James D. Jenkins

Attorney for Petitioner