No. 26-426

In the Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY, *ET AL.*,
Petitioners,

v.

D.V.D., *ET AL.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF IOWA AND 20 OTHER STATES AS AMICI CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

The Court directed the parties to brief and argue the following questions, among others. This brief addresses the first three.

1. Whether the district court had jurisdiction over Respondents' claims.

2. Whether the district court had authority to enter classwide declaratory relief and APA vacatur under 8 U.S.C. § 1252(f)(1).

3. Whether the Government's Guidance on third-country removals is unlawful under 8 U.S.C. § 1231(b), the Due Process Clause, or FARRA/CAT and its implementing regulations.

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INTEREST OF AMICI CURIAE

Amici are the States of Iowa, and 20 Additional States. When the federal government cannot remove an alien who has been ordered removed, that alien does not disappear. He lives in one of the States. And when the alien is a convicted murderer, rapist, or child abuser whose home country refuses to take him back, the people who live with the consequences are the States' citizens and the State and local officers sworn to protect them. "The pervasiveness of federal regulation does not diminish the importance of immigration policy to the States." *Arizona v. United States*, 567 U.S. 387, 397 (2012).

That importance is at its peak here. Once an alien's removal period lapses and removal is not reasonably foreseeable, the Executive generally must release him. *Zadvydas v. Davis*, 533 U.S. 678, 699–701 (2001); *Clark v. Martinez*, 543 U.S. 371, 378–79 (2005). Recalcitrant home countries thus may hold a key to American jail cells. Third-country removal is how the Executive takes that key back. Congress authorized removal to any country "whose government will accept the alien" when the countries closer to the alien will not. 8 U.S.C. § 1231(b)(1)(C)(iv), (b)(2)(E)(vii). Without that option, an alien whose country rejects the return of a hardened terrorist, rapist, or murderer, the State Department simply waits out the clock.

The States know what happens next. Take Jean Jacques. After serving a prison sentence for attempted murder, he was ordered removed to Haiti. Haiti rejected three separate requests for travel documents, and ICE released him. Office of Inspector General, U.S. Dep't of Homeland Sec., *Investigation into the Release of Jean Jacques* (June 16, 2016),

https://perma.cc/6MXW-UR9Q. Months later, Jacques stabbed 25-year-old Casey Chadwick to death in her Norwich, Connecticut apartment. *Id.*; *Feds to Investigate Why Murder Suspect Wasnt Deported*, NBC Connecticut (Jan. 21, 2016), https://bit.ly/4s7k3hK.

Tragically, Jacques is not an outlier on the federal docket. As of July 2024, ICE reported 662,566 noncitizens with criminal histories on its national docket, and 13,099 aliens convicted of homicide on its *non-detained* docket alone. Letter from Patrick J. Lechleitner, Deputy Dir., ICE, to Rep. Tony Gonzales (Sept. 25, 2024), https://perma.cc/2TJX-ZA2T.

The record here tells the same story in miniature. DHS has used the challenged Guidance to carry out thousands of third-country removals, including 103 removals of aliens whose home countries refused repatriation or who posed public-safety concerns, 23 of them murderers. Pet.App. 95a–96a ¶¶ 11–13. Another 1,432 convicted criminals await third-country removal, including 139 detained aliens convicted of offenses like murder, rape, and child sexual abuse. Pet.App. 94a, 98a ¶¶ 9, 15. Within days of the First Circuit's midnight order dissolving its stay, DHS canceled a flight carrying 70 criminal aliens to three countries and pulled nearly 150 more from flights to at least four others. Appl. 2, 40. Every one of those aliens who cannot be removed may end up released in a State.

The States also have a structural stake. Many state and local agencies now partner with ICE to identify and transfer removable criminal aliens; Iowa's Department of Public Safety, for one, signed a 287(g) task-force agreement in March 2025. *See*

Stephen Gruber-Miller, *Iowa DPS Signs Agreement with ICE Creating Immigration Task Force. What It Will Do:*, Des Moines Reg. (Apr. 17, 2025), https://perma.cc/3CPM-M4D4. Those partnerships assume that a transfer to federal custody ends in removal.

And the States depend on Congress's jurisdictional lines being enforced as written. Congress channeled challenges to executing removal orders into a single petition for review and forbade district courts from restraining the removal provisions on a classwide basis. 8 U.S.C. §§ 1252(a)(5), (b)(9), (f)(1), (g). When courts treat those jurisdictional lines as suggestions, the national immigration system bends to the views of a single district judge, and the States absorb the result.

The Court should reverse.

SUMMARY OF ARGUMENT

For more than a quarter century, the rules for third-country removal were settled. An alien ordered removed could be sent to any country willing to take him when the countries closer to him would not. 8 U.S.C. § 1231(b)(1)(C)(iv), (b)(2)(E)(vii). He could not be sent to a country where his life or freedom would be threatened on a protected ground, or where he had an individualized likelihood of being tortured. *Id.* § 1231(b)(3)(A); 8 C.F.R. § 208.16(c), 208.17. And where the Secretary of State obtained diplomatic assurances from a receiving country that the Attorney General found sufficient, the alien's torture claim was "not considered further" by anyone. 8 C.F.R. § 208.18(c)(3).

Congress paired those substantive rules with an equally deliberate scheme of review: fear-based objections and challenges to the execution of removal orders go to a court of appeals on a petition for review, and no lower court may restrain the removal provisions on a classwide basis. 8 U.S.C. § 1252(a)(4), (a)(5), (b)(9), (f)(1), (g).

The district court discarded both halves of that design. It entertained a class action that Congress prohibited, entered classwide declarations and a universal vacatur that do exactly what Congress forbade a classwide injunction to do, and read into a statute that disclaims any "procedural right" a procedural right that the court then promised to enforce. 8 U.S.C. § 1231(h). The First Circuit largely affirmed. The judgment should be reversed for three independent reasons.

I. The district court lacked jurisdiction. Section 1252(g) strips every court of jurisdiction over "any cause or claim" arising from "the decision or action" to "execute removal orders." Every class member, by definition, is someone DHS "has deported or will deport" to a third country, and every claim attacks the steps DHS takes to do so. The First Circuit escaped that text by limiting Section 1252(g) to "discretionary" actions. But the word appears nowhere in the statute, and the gloss makes jurisdiction turn on the merits. Sections 1252(a)(4), (a)(5), and (b)(9), and the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") § 2242(d), independently route these Convention Against Torture ("CAT")-based and country-of-removal objections to a petition for review.

II. Section 1252(f)(1) barred the classwide relief. No lower court may "enjoin or restrain" the

operation of Section 1231 on a classwide basis, and "restrain" means to "check, hold back, or prevent." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 549 (2022) (quotation omitted). Declarations that every class member holds an enforceable right to the court's preferred procedures, issued with the promise of follow-on injunctions and enforced the moment the stay lifted, restrain. A vacatur entered to install those procedures does too. A court cannot do in two steps what Congress forbade it to do in one.

III. The Guidance is lawful. Section 1231(b)(3) sets a substantive limit on where DHS may send an alien; it prescribes no procedure, and Section 1231(h) forbids construing Section 1231 to create one. FARRA is no different, and the First Circuit's contrary reading inverted ordinary interpretation by asking whether anything *precluded* the procedures it wanted. The Due Process Clause adds nothing. The Executive's judgment that a foreign sovereign's assurances are credible is conclusive, *Munaf v. Geren*, 553 U.S. 674, 702–703 (2008), and notice, an opportunity to claim fear, and prompt screening are ample process for aliens who already had full removal proceedings.

The Court should reverse the judgment of the court of appeals.

ARGUMENT

I. THE DISTRICT COURT LACKED JURISDICTION BECAUSE CONGRESS CHANNELED EVERY CLAIM ABOUT EXECUTING A REMOVAL ORDER AWAY FROM THE DISTRICT COURTS.

In 1996, Congress replaced a judicial-review regime that had invited piecemeal litigation over every stage of deportation with one that sends removal-related claims down a single path. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 475–476, 486–487 (1999) ("*AADC*").

Two features of that design decide this case. Section 1252(g) withdraws jurisdiction over claims arising from three specified actions, including the execution of removal orders. And Sections 1252(a)(4), (a)(5), and (b)(9), backed by FARRA § 2242(d), channel what remains, including every CAT claim and every question of law or fact arising from an action to remove an alien, into a petition for review. Respondents' suit runs headlong into both.

A. Section 1252(g) Bars "Any" Claim Arising From An Action To Execute A Removal Order, Not Just Claims Attacking Discretion.

This Court has long issued a call to read unambiguous text to do what the text says. "[N]otwithstanding any other provision of law (statutory or nonstatutory)," "no court shall have jurisdiction to hear any cause or claim by or on behalf

of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. § 1252(g). This Court has read that law to cover "three discrete actions." *AADC*, 525 U.S. at 482. Executing a removal order is one of them.

Respondents' claims straightforwardly arise from challenging an executed removal order. The certified class consists of aliens with final removal orders "whom DHS has deported or will deport" to a third country. Pet.App. 106a.

An alien whose removal order DHS is not executing is excluded from the class. And the only aspect Respondents challenge is how DHS goes about executing those orders: which notice it gives, how long it waits, and whether it may rely on a receiving country's assurances before putting the alien on the plane. A removal order "does not limit the authority of" DHS "to remove the alien to any other country as permitted by" Section 1231(b) when removal to the designated country fails. 8 C.F.R. § 1240.12(d). Choosing that country, and moving the alien there, *is* executing the order.

AADC confirms that point. The plaintiffs there alleged that the government had targeted them for removal in violation of the First Amendment. 525 U.S. at 473–474. That is a claim that the Executive exceeded a legal limit on its authority. The Court still held that it fell "squarely within § 1252(g)." *Id.* at 487. If an alleged constitutional violation in commencing proceedings is a claim "arising from" the commencement of proceedings, an alleged procedural violation in executing a removal order is a claim

"arising from" its execution. After all, the Constitution reigns supreme.

The First Circuit avoided that conclusion by holding that Section 1252(g) reaches only "discretionary" decisions, and that the Executive has no discretion to violate the law. Pet.App. 119a, 122a. That limitation fails for three reasons.

First, it is not in the statute. Section 1252(g) covers "any cause or claim" arising from "the decision or action" to execute removal orders. Congress knows how to confine review bars to discretion when it wants to. *See* 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review"); 8 U.S.C. § 1252(a)(2)(B) (barring review of certain "[d]enials of discretionary relief"). It did not do so here. The courts of appeals that have looked at the text have said so. *See E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021); *Rauda v. Jennings*, 55 F.4th 773, 777–778 (9th Cir. 2022).

Second, the gloss makes jurisdiction depend on the merits. Under the First Circuit's rule, a court may hear the claim only if the Executive acted unlawfully, and it can know whether the Executive acted unlawfully only by hearing the claim. This Court has rejected that circularity in this very statutory scheme. *Aleman Gonzalez*, 596 U.S. at 554.

Third, the gloss swallows the rule. Nearly every claim against the execution of a removal order can be pleaded as a claim that the Executive breached some statutory, regulatory, or constitutional duty. Respondents did exactly that. If pleading illegality unlocks the courthouse, Section 1252(g) protects

nothing but the lawful exercise of discretion, which no one would challenge anyway. Congress does not enact jurisdictional bars that bar only suits plaintiffs would lose.

The First Circuit's two other moves fare no better. It reasoned that Respondents challenge a decision *not* to execute the country-designation portion of their orders. Pet.App. 116a, 118a. But removal to a third country under 8 C.F.R. § 1240.12(d) is an execution of the order, and a claim that DHS is executing an order the wrong way still "aris[es] from" the decision to execute it.

Nor can invoking *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 19 (2020), save the First Circuit's analysis. Pet.App. 119a. *Regents* involved the rescission of a deferred-action program that conferred work authorization and other benefits, a programmatic choice the Court found was not a decision to commence, adjudicate, or execute anything. 591 U.S. at 19. The challenged Guidance here governs nothing *but* the execution of final removal orders.

B. Sections 1252(a)(4), (a)(5), And (b)(9) And FARRA Channel Fear-Based Objections To A Country Of Removal Into A Petition For Review.

Even if Section 1252(g) left any room, and it does not, the INA's channeling provisions fill it. "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States" is available "only in

judicial review of a final order under this section." 8 U.S.C. § 1252(b)(9).

A petition for review is "the sole and exclusive means for judicial review of any cause or claim under" CAT. *Id.* § 1252(a)(4). And FARRA explains that nothing in it confers jurisdiction "to consider or review claims raised under the Convention . . . or any other determination made with respect to the application of the policy," "except as part of the review of a final order of removal." FARRA § 2242(d), 112 Stat. 2681-822; see 8 C.F.R. 208.18(e)(1).

Respondents' suit is built on CAT and on objections to the country of removal. Its premise is that class members have a right to raise torture and persecution claims against a newly designated country before removal. That is a "cause or claim under" CAT, and a question of law "arising from" an "action taken . . . to remove an alien." The district court itself once described the relief Respondents sought as "based on" FARRA. *D.V.D. v. U.S. Dept. of Homeland Sec.*, 778 F. Supp. 3d 355, 379 (D. Mass. 2025).

Nor is the channeled path to a petition for review illusory. Under the Guidance, an alien who expresses fear and satisfies the screening standard is referred to the immigration court, through reopening where necessary. Pet.App. 85a, 87a. That route ends in an administrative decision reviewable on a petition for review, which is exactly where Congress wanted these claims heard. *See Nasrallah v. Barr*, 590 U.S. 573, 582–585 (2020). DHS has long agreed to join motions to reopen in appropriate third-country cases. 70 Fed. Reg. 661, 671 (Jan. 5, 2005). Government counsel described that very route to the First Circuit.

Pet.App. 30a n.49. A procedural objection to how the screening was conducted can travel up with the merits.

The First Circuit held that Section 1252(a)(4) reaches only claims for which CAT itself supplies the cause of action. Pet.App. 124a–126a; *see* Pet.App. 31a–32a. But CAT is not self-executing and creates no cause of action at all. On the First Circuit's reading, Section 1252(a)(4) applies to nothing. The court's rejoinder, that the law still bars CAT claims in habeas, Pet.App. 124a, ignores that Section 1252(a)(4) displaces "any other provision of law (statutory or nonstatutory), *including* section 2241 . . . or any other habeas corpus provision." 8 U.S.C. § 1252(a)(4) (emphasis added). "Including" marks habeas as one example, not the whole set. Scalia & Garner, *Reading Law* 132 (2012). And the APA is just as much an "other provision of law."

The First Circuit likewise read Sections 1252(a)(5) and (b)(9) out of the case because Respondents do not seek "review of an order of removal, the decision to seek removal, or the process by which removability is determined." Pet.App. 129a. That language comes from the *Jennings* plurality's description of claims, like challenges to prolonged detention, that are only tangentially related to removal. *Jennings v. Rodriguez*, 583 U.S. 281, 293–294 (2018) (plurality opinion).

But Respondents' claims here go to the core of removal itself: where, when, and how the alien is sent abroad. Questions about the country of removal have been part of removal proceedings for decades. See 8 C.F.R. § 1240.10(f), 1240.12(d).

C. The First Circuit's Narrowing Constructions Would Gut A Channeling Scheme The States Depend On.

The stakes reach well beyond this case. Congress enacted Section 1252 to end the "deconstruction, fragmentation, and hence prolongation of removal proceedings." *AADC*, 525 U.S. at 487. The First Circuit's approach unfortunately reimposes all three issues.

Under it, any class of aliens may file an APA suit in a district court of its choosing, plead that the Executive has violated a procedural duty in executing removal orders, and obtain nationwide relief governing how removals proceed. Today the subject is third-country removal. Tomorrow it will be the timing of removal flights, the form of travel documents, or the content of a notice of removal. Every step in executing a removal order could be relitigated in a district court before it happens.

The States are directly hit by that fragmentation. Each new round of collateral litigation delays removals, and each delay pushes more criminal aliens past the point where this Court has said detention must end. *Zadvydas*, 533 U.S. at 701. Congress already decided where these claims belong. This Court should hold that the district court had no jurisdiction to hear them.

II. SECTION 1252(F)(1) BARS CLASSWIDE ORDERS THAT "RESTRAIN" THIRD-COUNTRY REMOVALS, WHATEVER THE LABEL.

Clever labeling cannot evade Congress's metes of jurisdiction. "Regardless of the nature of the action

or claim or of the identity of the party or parties bringing the action," no court other than this one "shall have jurisdiction or authority to enjoin or restrain the operation of" the INA's removal provisions, "other than with respect to the application of such provisions to an individual alien." 8 U.S.C. § 1252(f)(1).

Section 1231(b), which authorizes third-country removal, is among the covered sections. *Aleman Gonzalez*, 596 U.S. at 550–551. The statute thus "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." *Id.* at 550. And it does so even when the plaintiffs say the officials are violating the statute or the Constitution. *Id.* at 552–554.

The district court here did not enter an injunction despite clearly intending to stop these third-country removals. And that had a purpose. Having been stayed twice by this Court, it acknowledged that it "could be missing something," and so swapped its injunction for a set of classwide declarations and a universal vacatur, pointing to the "different relief." Pet.App. 78a. This Court has not countenanced such clever attempts to repeatedly evade its emergency docket decisions. *See Nat'l Republican Cong. Comm. v. Brown*, No. 26A274, 610 U.S. ___, 2026 WL 2618462 (Sept. 4, 2026).

A. "Restrain" Reaches Coercive Declarations That Dictate How Officers Must Execute Removal Orders.

Section 1252(f)(1) uses two verbs. "Enjoin" covers injunctions. "Restrain" is broader: it reaches orders that "check, hold back, or prevent" the covered provisions' operation. *Aleman Gonzalez*, 596 U.S. at 549 (quotation marks omitted). Any classwide order that does that "restrain[s]" covered removals falls within the bar, however it is styled.

The declarations here do that work. They declare that every class member has "the right to meaningful notice before removal to any third country" and "the right to a meaningful opportunity to raise a country-specific claim against removal before removal to any third country." Pet.App. 81a. Those declarations speak to DHS, announcing what it must do before it may carry out Section 1231(b). And they leave the content of "meaningful" to the same court that, at the preliminary-injunction stage, created its own judicial impositions under the same word to require at least ten days to raise a fear claim, 72 hours' notice of each interview, and fifteen days to seek reopening. *DVD v. DHS*, 2025 WL 1453640, at *1 (D. Mass. May 21, 2025); *D.V.D. v. U.S. Dept. of Homeland Sec.*, 2025 WL 1453604 at *1 (D. Mass. May 5, 2025); 778 F. Supp. 3d at 393.

The declarations come with teeth. A declaratory judgment is the foundation for "[f]urther necessary or proper relief," including an injunction, against any adverse party whose rights it declares. 28 U.S.C. § 2202. So every class member holds a ready-made basis for an individual injunction the moment DHS follows its own Guidance instead of the court's. *See*

Alli v. Decker, 650 F.3d 1007, 1020 n.2 (3d Cir. 2011) (Fuentes, J., dissenting in part). Just because the classwide restraint takes two steps rather than one does not render it any less of a "restrain[t]."

No one in this case has treated the declarations as advisory. Respondents filed an "emergency" motion at 8:20 p.m. asking the First Circuit to dissolve its stay, and the court granted it at 11:36 p.m. without waiting for the government. Pet.App. 154a. Respondents then told this Court that the government must comply immediately. Stay Opp. 2, 9, 34. And DHS did comply: it canceled a flight carrying 70 criminal aliens to three countries and pulled nearly 150 more from scheduled removals. Appl. 2, 40. Relief that grounds removal flights within hours "check[s], hold[s] back, [and] prevent[s]" the operation of Section 1231(b).

This Court has long refused to let a declaratory label defeat a limit on injunctions. The Tax Injunction Act forbids district courts to "enjoin, suspend or restrain" state tax collection, and the Court held that it bars declaratory judgments, which "may in every practical sense operate to suspend collection of the state taxes until the litigation is ended." *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982) (quotation omitted). Where an injunction against state proceedings would be barred, "declaratory relief should ordinarily be denied as well." *Samuels v. Mackell*, 401 U.S. 66, 72–73 (1971). And an order with the "practical effect" of an injunction is treated as one. *Abbott v. Perez*, 585 U.S. 579, 594 (2018). The same verb ("restrain") and the same substance-over-form logic govern here.

The First Circuit dismissed *Grace Brethren* as a federalism case. Pet.App. 149a. But whether a declaration operates like an injunction does not depend on whether the restrained sovereign is a State or the United States. If anything, Section 1252(f)(1) speaks more emphatically than the Tax Injunction Act: it applies "[r]egardless of the nature of the action or claim."

That reading forbids what Congress forbade: classwide orders that, in substance, dictate how the Executive must carry out the covered law.

B. A Classwide Vacatur Entered To Install The Court's Procedures Restrains Just The Same.

The Court need not decide whether Section 1252(f)(1) reaches every vacatur of every agency action touching the covered provisions, a question it has twice reserved. *Biden v. Texas*, 597 U.S. 785, 801 n.4 (2022); *Aleman Gonzalez*, 596 U.S. at 551 n.2. The vacatur here is a narrow case. It was entered on behalf of a certified class of aliens, alongside declarations prescribing the procedures DHS must use instead, to accomplish what the stayed injunction had accomplished. Pet.App. 78a–81a.

The vacated documents confer no authority. They tell officers how to exercise authority Congress already gave them. Vacating them leaves officers with the statute, the regulations, and a judgment declaring what the court believes the statute requires.

The First Circuit called vacatur "less drastic" because it "neither compels nor restrains further agency decision-making." Pet.App. 151a. That may be true sometimes. But it is not true of a vacatur whose

only function, paired with a declaration of the replacement procedures, is to stop DHS from executing removal orders.

C. Respondents' "Doublet" Theory Reads "Restrain" Out Of The Statute.

Respondents' principal answer is that "enjoin or restrain" is a legal doublet meaning only injunctions and restraining orders. Stay Opp. 14. The statute's neighbors refute that. The very next paragraph explains that "no court shall enjoin the removal of any alien" absent a heightened showing, and it uses "enjoin" alone. 8 U.S.C. § 1252(f)(2).

It is implausible that Congress meant to leave temporary restraining orders free under paragraph (2) while barring them under paragraph (1). The better inference is that "enjoin" already covers injunctive orders of every duration, and that "restrain" in paragraph (1) adds something: coercive relief that does an injunction's work under another name. See *Aleman Gonzalez*, 596 U.S. at 549. Had the doublet theory been obvious, this Court would not have twice left the question open.

Respondents also point to Section 1252(e)(1)(A), which bars "declaratory, injunctive, or other equitable relief" in a different context. Stay Opp. 13. But that section is framed by remedy, while Section 1252(f)(1) is framed by effect: it bars orders that "restrain the operation of" the statute. Congress listed remedies in one provision and described a function in the other. A declaration that does not restrain is not barred. A declaration that does is.

Nor does that reading leave aliens without a remedy. Section 1252(f)(1) preserves relief "with

respect to the application of such provisions to an individual alien," and it leaves this Court's authority intact. The district court should have respected that choice.

III. THE GUIDANCE IS LAWFUL.

The Guidance tracks the line Congress drew. DHS may not remove an alien to a country where he would likely be persecuted on a protected ground or tortured. So before a third-country removal, DHS either relies on a receiving country's assurances that the State Department finds credible, or it gives the alien written notice, waits at least 24 hours, and screens any fear he expresses, referring him to the immigration court if he meets the standard. Pet.App. 84a–87a. None of the INA, FARRA, nor the Constitution requires more.

A. Section 1231(b) Sets A Substantive Limit And Leaves Procedure To The Executive.

Section 1231(b)(3)(A) explains that the Attorney General "may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country" on a protected ground. That is a limit on outcomes. It says nothing about notice periods, interviews, or adjudicators. And where a statute imposes a substantive obligation without prescribing procedures, the agency, not a court, decides how to meet it. *Vermont Yankee Nuclear Power Corp. v. NRDC, Inc.*, 435 U.S. 519, 543–544 (1978).

Congress did not leave that conclusion to inference. It added: "Nothing in this section shall be construed to create any substantive or procedural

right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person." 8 U.S.C. § 1231(h). The courts construed Section 1231 to create a procedural right, legally enforceable by a class of aliens against DHS. But the statute itself precludes that result.

The district court rested on the presumption of "congressional solicitude for fair procedure, absent explicit statutory language to the contrary." Pet.App. 49a (quoting *Califano v. Yamasaki*, 442 U.S. 682, 693 (1979)). The district court failed to wrestle with section 1231(h), though, which is explicit statutory language to the contrary. The presumption the district court invoked defeats its own conclusion.

The First Circuit, for its part, candidly read Section 1231(b) "to mean more than what [it] plainly say[s]." Pet.App. 137a. Constitutional avoidance lets a court choose between plausible readings of the text and confers no "license to graft" new requirements "onto the text." *Jennings*, 583 U.S. at 298. This Court reversed the Ninth Circuit in *Jennings* for reading bond hearings into detention statutes that contained none. *Id.* at 296–306. The First Circuit did the same as to notice periods and hearings here.

The practical rationale fueling the decision before the Court today fares no better. The First Circuit reasoned that DHS cannot know whether a particular alien faces persecution without the alien's input. Pet.App. 49a, 137a.

But for an assurance country, the receiving government has represented that it will not persecute or torture anyone removed there, and the State Department has found that representation credible.

Pet.App. 84a. A credible assurance that applies to every removed alien necessarily applies to each one. For any other country, the Guidance *does* seek the alien's input: it screens any fear he raises as to a country that he may be sent. Pet.App. 85a–87a.

B. FARRA Does Not Silently Import The Procedures The First Circuit Read Into Section 1231(b).

FARRA states a policy against returning anyone to a country where he would likely be tortured and directs agencies to prescribe implementing regulations. FARRA § 2242(a)–(b), 112 Stat. 2681-822. It sets no procedures of its own. And it forecloses judicial review outside a petition for review. *Id.* § 2242(d).

The agencies wrote those regulations in 1999, and the regulations settle the question Respondents raise. When the Secretary of State obtains assurances that an alien would not be tortured in a country, and the Attorney General finds them sufficiently reliable, "the alien's claim for protection under the Convention Against Torture shall not be considered further by an immigration judge, the Board of Immigration Appeals, or an asylum officer." 8 C.F.R. § 208.18(c)(3).

For more than 25 years, then, the CAT framework has permitted removal on the strength of diplomatic assurances without any individual hearing. And the regulations' judicial-review provision disclaims creating "a private right of action." 8 C.F.R. 208.18(e)(2).

The First Circuit nonetheless held that FARRA requires notice and an opportunity to be heard, reasoning that "there is no explicit language in the

FARRA/CAT or related regulations that precludes" that reading. Pet.App. 143a. That inverts statutory interpretation. Courts ask what a statute requires, not whether it forbids what a court would like to add. The question is especially apt for the INA, a "comprehensive and reticulated statute" that should not "be supplemented by extratextual remedies." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (quotation marks omitted).

The court then reasoned that because the same regulations govern withholding and CAT claims, its reading of Section 1231(b) must carry over to FARRA. Pet.App. 144a (citing *Clark v. Martinez*, 543 U.S. 371 (2005)). That bootstraps one error onto another. It assumes the Section 1231(b) holding is right, and it lets a shared regulation dictate the meaning of a statute. *Cf. Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). If the shared regulations prove anything, it is that the Executive has long read both to permit removal on assurances without more process.

C. The Due Process Clause Requires Nothing More Than The Guidance Provides.

1. The Executive's acceptance of a foreign sovereign's assurances is conclusive.

Whether a foreign government will keep its word is a judgment the Constitution commits to the political branches. In *Munaf v. Geren*, this Court held that federal courts could not block the transfer of two American citizens to Iraqi custody based on fears of torture, because the political branches had determined that the transfer was appropriate. 553 U.S. at 702–703.

The Judiciary "is not suited to second-guess such determinations," which "would require federal courts to pass judgment on foreign justice systems and undermine the Government's ability to speak with one voice in this area." *Id.* at 702. If that is true for citizens, it is true "a fortiori" for aliens with no right to remain. *Kiyemba v. Obama*, 561 F.3d 509, 517–518 (D.C. Cir. 2009) (Kavanaugh, J., concurring); *see id.* at 514 (majority opinion).

Respondents answer that *Munaf* involved individualized assurances. Stay Opp. 30–31. Nothing in *Munaf* turned on that. And whether a sovereign's assurance should cover one person or everyone is itself a diplomatic judgment: it depends on what a foreign government will agree to, on what terms, and with what consequences if it breaks its word.

Courts are no better positioned to second-guess the scope of the Executive's judgment than its substance. The district court demanded to know "[w]hom do they cover? What do they cover? Why has the Government deemed them credible?" Pet.App. 3a. That is a demand to put the State Department's diplomacy on trial in a Boston courtroom. The Secretary of State has explained that third-country arrangements are "a delicate diplomatic endeavor" that judicial intervention threatens. Pet.App. 88a–90a ¶¶ 3, 6–8.

Respondents' objection also mistakes substance for procedure. Their real complaint is that a categorical assurance should not suffice to show that a particular alien is safe. That is a challenge to the substantive standard, "recast in 'procedural due process' terms." *Reno v. Flores*, 507 U.S. 292, 308 (1993). Once the Executive has made the substantive

determination, an individual hearing would examine nothing the standard makes relevant. "Process is not an end in itself." *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983).

2. Notice, a chance to claim fear, and prompt screening are ample process for aliens already ordered removed.

For countries without assurances, the Guidance requires written notice of the country of removal, explained to the alien; a wait of generally at least 24 hours; and, if the alien expresses fear, a screening by USCIS, generally within 24 hours, with referral to the immigration court if he shows that persecution or torture is more likely than not. Pet.App. 85a–87a.

That extra process comes on top of everything the class has already received. Every class member has a final removal order, entered after proceedings in which he could designate a country, contest removability, and seek protection. 778 F. Supp. 3d at 378. The only question left is the destination.

In that posture, the Guidance's process is constitutionally ample. It mirrors in timing the expedited-removal screening that this Court upheld against a due-process challenge. *Dept. of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–140 (2020). And many class members have never been lawfully admitted. For them, "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).

The district court distinguished *Thuraissigiam* as an admissibility case, Pet.App. 55a–56a, but the

alien there also sought additional process for his withholding and CAT claims, and the Court rejected his due-process claim in full. 591 U.S. at 118, 138–140.

Respondents lean on *A.A.R.P. v. Trump*, 605 U.S. 91 (2025) (per curiam). Stay Opp. 27–28, 31. That case involved detainees facing summary removal under the Alien Enemies Act who needed enough time to file habeas petitions contesting whether the Act applied to them at all. 605 U.S. at 94–95. The protection due process affords an alien "may vary depending upon status and circumstance." *Zadvydas*, 533 U.S. at 694.

An alien whose removability was finally adjudicated years ago, and who now learns only where he will go, stands in a very different place. The same is true of *Kossov v. INS*, 132 F.3d 405 (7th Cir. 1998), and *Andriasian v. INS*, 180 F.3d 1033 (9th Cir. 1999), on which the district court relied. Pet.App. 2a. Those cases involved aliens who received no meaningful chance to contest a country first designated at the end of their hearings. The Guidance gives notice and a chance to raise fear before removal.

Nor did the government concede otherwise. The district court quoted government counsel's statement in *Riley v. Bondi* that the government would give notice and an opportunity to raise fear before a third-country removal. Pet.App. 2a. That is what the Guidance provides for every country that has not given assurances. The assurance framework, which the CAT regulations have recognized since 1999, was not at issue in that exchange.

The district court's alternative, finally, has no stopping point. Its final judgment requires a

"meaningful" opportunity without saying what that means. Pet.App. 81a. Its last attempt to say so produced a 10-day fear window, a 72-hour interview notice, and a 15-day reopening period, about 25 days of delay for any alien who voices fear, however frivolous. For an alien whose home country has refused him, that delay can unravel a negotiated removal and run out the clock that *Zadvydas* starts. When it does, the alien is released, and a State inherits him. The Constitution does not require that result.

CONCLUSION

The Court should reverse the judgment of the court of appeals and remand with instructions to dismiss.

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APPENDIX

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