District Judge Jamal N. Whitehead

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE MIGUEL ARENADO-BORGES, Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02193-JNW FEDERAL RESPONDENTS'[1] RETURN Noted for consideration: December 22, 2025

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") has lawfully detained Petitioner Jose Miguel Arenado-Borges, a citizen of Cuba who is subject to a final removal order, to facilitate his removal to Cuba. Petitioner's detention is lawful. He is a noncitizen subject to an administratively final order of removal, and he is lawfully detained under Section 241 of the Immigration and Nationality Act ("INA"). *See* 8 U.S.C. § 1231. His detention is not indefinite under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Although Cuba has not issued a travel document, ICE is pursing third country removal to Mexico and has had success in removing

[1] Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney's Office.

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Cuban nationals to Mexico. Accordingly, this Court should deny Petitioner's habeas petition without an evidentiary hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Detention Authorities and Removal Procedures

The INA governs the detention and release of noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the [noncitizen] from the United States." *Id.* To ensure a noncitizen's presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision:

> [A noncitizen] ordered removed who is inadmissible under section 1182, removable under section 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4) of this title or who has been determined by the [the Secretary of Homeland Security] to be a risk to the community or unlikely to comply with the order of removal, *may* be detained *beyond the removal period* and, if released, shall be subject to the terms of supervision in paragraph (3).

8 U.S.C. § 1231(a)(6) (emphasis added).

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During the removal period, ICE[2] is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." *Zadvydas*, 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time to bring about a noncitizen's removal. *Id.* at 701.

Once it is determined that there is no significant likelihood of removal in the reasonably foreseeable future, noncitizens may be released on an Order of Supervision ("OSUP"). 8 C.F.R. § 241.13(h). ICE may revoke a noncitizen's OSUP and return the noncitizen to custody when, on account of changed circumstances, there becomes a significant likelihood of the noncitizen's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(2).

Here, Petitioner is the subject of an administrative order of removal that was entered on November 29, 1999, and became final on or about December 29, 1999 (when the 30-day appeal deadline expired and Petitioner did not file a timely notice of appeal). 8 C.F.R. § 1241.1; Declaration of Deportation Officer Sheldon Benjamin (Benjamin Decl.) at ⁋ 6. ICE released Petitioner on an OSUP on November 15, 2000. Benjamin Decl. at ⁋ 7. Thus, the "presumptively reasonable" six-month custody period has expired. *Zadvydas*, 533 U.S. at 701. ICE recently revoked the OSUP and is pursuing third country removal to Mexico. *See* Declaration of Kristin B. Johnson ("Johnson Decl."), Ex. D; Benjamin Decl. at ⁋ 12. ICE has had success in removing Cuban nationals to Mexico. Benjamin Decl. at ⁋ 13.

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[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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These changed circumstances support Petitioner's current detention as his removal will occur once Mexico issues a travel document if Petitioner does not claim a fear of removal to Mexico. Thus, his removal is likely in the reasonably foreseeable future.

B. Petitioner Jose Miguel Arenado-Borges

Petitioner is a native and citizen of Cuba who entered the United States on or about August 19, 1974. Benjamin Decl. at ⁋ 4; Johnson Decl. Ex. A. Petitioner was convicted of crimes constituting aggravated felonies and crimes related to controlled substances, including Involuntary Manslaughter under California Penal Code § 192 and Possession of a Controlled Substance under California Health and Safety Code § 11377(a). Benjamin Decl. at ⁋ 5; Johnson Decl. Ex. B. Petitioner was placed in removal proceedings. Benjamin Decl. at ⁋ 5.

On November 29, 1999, an immigration judge (IJ) in Los Angeles, California ordered Petitioner removed from the United States to Cuba. Benjamin Decl. at ⁋ 6.

On November 15, 2000, Petitioner was released from ICE custody on an Order of Supervision following an order on his Habeas Petition in the United States District Court for the Central District of California. Benjamin Decl. at ⁋ 7. Following release from immigration custody, Petitioner accrued several additional convictions relating to controlled substances. Benjamin Decl. at ⁋ 8; Johnson Decl. Ex. B.

On May 27, 2025, Petitioner was brought into immigration custody. Benjamin Decl. at ⁋ 5; Johnson Decl. Ex. C. ICE determined that he should remain in custody while they seek to remove him to Cuba or a third country. Johnson Decl. Ex. C. Petitioner has sought review of that custody determination by an immigration judge. *Id.*

On June 25, 2025, a nomination was submitted to the government of Cuba. Benjamin Decl. at ⁋ 11. As of this date, no response has been received from the government of Cuba. *Id.*

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On November 20, 2025, Petitioner was served with notice that ICE intends to remove Petitioner to Mexico. Benjamin Decl. at ⁋ 12. If Petitioner does not claim fear of removal to Mexico, ICE will attempt to remove him expeditiously. Benjamin Decl. at ⁋ 13. ICE has had success in removing Cuban nationals to Mexico. *Id.* If Petitioner claims fear of removal to Mexico, his case will be referred to U.S. Citizenship and Immigration Services for a third country fear screening. Benjamin Decl. at ⁋ 14.

III. LEGAL STANDARD

It is axiomatic that "[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopath Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective jurisdictions." To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

IV. ARGUMENT

A. This Court lacks jurisdiction to enjoin Petitioner's redetention and removal to Cuba.

In the exercise of its constitutional power to define federal court jurisdiction, in 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which repealed the existing scheme for judicial review of final orders of deportation, and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee ("AADC"),* 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress provided in the newly-enacted Section 1252(g) that reads as follows:

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> Except as provided in this section and notwithstanding any other provision of law, 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 under this Act.

8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to clarify that the statute's proscription against jurisdiction does in fact apply to habeas actions, such as the one Petitioner now brings before this Court. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides that:

> Except as provided in this section and notwithstanding any other provision of law, *(statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title*, 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 under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

In addition to the bar to jurisdiction at Section 1252(g), the IIRIRA and REAL ID Act amendments to the INA also reflect Congress's desire to "streamline immigration proceedings" and to "effectively limit all aliens to one bite of the apple with regard to challenging an order of removal." *Singh v. Gonzales*, 499 F.3d 969, 976-77 (9th Cir. 2007) (quoting *Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005)). Under these amendments, individuals who seek to challenge an order of removal may do so, but only as part of a petition for review in the appropriate court of appeals, as provided under Section 1252. In particular, Section 1252(b)(9) provides that:

> 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 under this subchapter *shall be available only in judicial*

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> *review of a final order under this section.* Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision*, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal . . .").

Thus, this Court lacks jurisdiction to enjoin ICE from revoking Petitioner's OSUP, redetaining him, and executing his final order of removal by removing him to Cuba.

B. Petitioner's detention is not indefinite and he is being given the due process he is entitled to.

Petitioner has been detained for more than 90 days and thus his detention falls under Section 1231(a)(6), which entitles the government to detain aliens beyond the 90-day removal period or release them on supervision. Continued detention beyond the end of the removal period is governed by the Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 671 (2001). In *Zadvydas*, the Court held that section 1231(a)(6) implicitly limits an alien's detention to a period reasonably necessary to bring about that alien's removal from the United States and does not permit "indefinite" detention. *Id.* at 701. Under *Zadvydas*, "[a]n alien is entitled to habeas relief after a presumptively reasonable six-month period of detention under § 1231(a)(6) only upon demonstration that the detention is 'indefinite'—i.e., that there is 'good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.'" *Diouf v. Mukasey* ("*Diouf I*"), 542 F.3d 1222, 1233 (9th Cir. 2008) (quoting *Zadvydas*, 533 U.S. at 701).

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"When detention crosses the six-month threshold and release or removal is not imminent, the private interests at stake are profound. Furthermore, the risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decision maker is substantial." *Castaneda*, 2015 WL 3882755, at *5 (quoting *Diouf II*, 634 F.3d at 1091-92). The Immigration Judge may still find the detention justifiable, but a hearing provides the detainee with a necessary constitutional safeguard. *Id.*

Here, ICE made an initial custody determination that Petitioner should remain detained while they pursue removal to Cuba or a third country. Johnson Decl. Ex. C. Petitioner requested review of that determination by an Immigration Judge. *Id.* Thus, Petitioner will have his custody reviewed where an Immigration Judge will decide whether DHS has established by clear and convincing evidence that Petitioner is a danger to society.[3] If the Immigration Judge makes such a finding, Petitioner will have the right to appeal this decision to the BIA.

Petitioner does not challenge ICE's custody determination through his habeas petition. He does not argue that he has not been given sufficient due process or a bond hearings that was somehow inadequate. Rather, he simply argues that he should be released because his detention is prolonged. But even though his detention is prolonged, it is lawful, because he has been given all the due process he is entitled to.

Furthermore, there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future. On November 20, 2025, Petitioner was served with notice that ICE intends to remove Petitioner to Mexico. Benjamin Decl. at ⁋ 12. If Petitioner does not claim fear of removal to Mexico, ICE will attempt to remove him expeditiously. Benjamin Decl. at ⁋ 13. ICE has had success in removing Cuban nationals to

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[3] It is likely DHS will be able to meet this burden given Petitioner's extensive and dangerous criminal history that includes involuntary manslaughter by vehicle under controlled substances. Johnson Decl. Ex. B.

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Mexico. *Id.* If Petitioner claims fear of removal to Mexico, his case will be referred to U.S. Citizenship and Immigration Services for a third country fear screening. Benjamin Decl. at ¶ 14.

C. The government has the legal authority to remove Petitioner to a third country.

The Court should deny Petitioner's request for an order barring his removal to a third country because he is a member of the plaintiff class in *D.V.D. v. Dep't of Homeland Sec.*, Civ. A. No. 25-10676 (D. Mass.). The plaintiff class in *D.V.D.* sought and received an injunction barring ICE from removing members of the class to third countries. That injunction was stayed by two orders of the Supreme Court. Petitioner cannot end-run the Supreme Court's stay of an injunction barring his removal to a third country by seeking the same relief in a different court.

Petitioner is a member of the non-opt out *D.V.D.* certified class. He is an individual subject to a final order of removal who fears removal to a third country if ICE is unsuccessful in removing him to Cuba. Because Petitioner is bound as a member of the non-opt out class of individuals governed by the *D.V.D.* nationwide preliminary injunction, which the Supreme Court has now stayed finding that the government is likely to prevail on the merits of its appeal, this Court should dismiss the action. Simply put, Petitioner is not entitled to another bite at the apple before this Court to obtain relief that has already been stayed by the Supreme Court.

As explained above, the District of Massachusetts entered a preliminary injunction prescribing the process to which *D.V.D.* class members were entitled before removal to a third country and certified a non-opt out class. Petitioner is a member of that class. The Supreme Court stayed the preliminary injunction but left certification of the non-opt out class intact, signaling that the *D.V.D.* class members would not succeed on the merits of their claims and the Government would ultimately prevail.

First, this Court should avoid providing Petitioner with relief that eventually may conflict with the relief, if any, ultimately provided to the *D.V.D.* class. Petitioner's habeas

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petition, seeking an order preventing his removal to a third country challenges how Respondents should implement a decision to remove him to a third country should that occur. Dkt. 1. That is precisely the challenge brought by the *D.V.D.* class. This Court, therefore, should not wade into Petitioner's claims because such claims are being actively litigated in the *D.V.D.* class action, which is currently before the First Circuit. To do otherwise would cut against the entire purpose of a Rule 23(b)(2) non-opt out class action and risk an order that will conflict with not only the relief, if any, eventually provided to the *D.V.D.* class, but also the Supreme Court's rejection of the relief initially temporarily provided to class members by the District of Massachusetts.

Second, this Court should avoid providing Petitioner with relief that is likely to be rejected and overturned by the Supreme Court. The District of Massachusetts attempted to set parameters around third country removals, but the Supreme Court, in staying the *D.V.D.* preliminary injunction, effectively rejected those parameters and signaled that ultimately the class members would not succeed on the merits of the case and the Government would prevail. The Supreme Court confirmed that its stay applied to individual class members by granting the government's motion for clarification on July 3, 2025. Petitioner cannot now make an end run around the Supreme Court's stay in *D.V.D.* by seeking relief in this Court. The Supreme Court has already found that Respondents are likely to succeed on the legal arguments presented in response to the instant habeas petition. Limiting Respondents' ability to remove Petitioner to a third country would therefore be directly contrary to the Supreme Court's decision to stay the preliminary injunction in *D.V.D.*

Additionally, courts recognize that members of class action lawsuits should not be permitted to bring separate actions that litigate issues raised in the class action. *See Wynn v. Vilsack*, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (collecting cases) ("Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the

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ground that the plaintiff is a member of a parallel class action.") (internal quotations omitted). This prevents class members from avoiding the binding results of the class action. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982).

This is also the rule in this Circuit. A district court may properly dismiss an individual complaint where the plaintiff is a member in a class action, to the extent the individual action duplicates the claims and seeks the same relief as the class action. *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013) (discussing *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979)). Such a dismissal is up to the court's discretion based on its inherent power to control its own docket. *Crawford*, 599 F.2d at 893. But it is "imperative to avoid concurrent litigation in more than one forum whenever consistent with the rights of the parties." *Id.; see Frost v. Symington*, 197 F.3d 348, 359 (9th Cir. 1999) ("To the extent that a class action involving the same issues raised by [plaintiff] is currently pending . . . [he] may have to bring all of this related claims for equitable relief . . . through . . . class counsel.").

This Court should decline to exercise jurisdiction over Petitioner's third country removal claims as a matter of comity because the District of Massachusetts has certified a class action that includes the same claim Petitioner is pursuing here. *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982) ("There is a generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district.").

Consequently, in light of *D.V.D.*, federal district courts in other jurisdictions have denied claimants the same relief that Petitioner is seeking here. *See Ghamelian v. Baker,* 2025 WL 2049981, at *3 (D. Md. July 22, 2025), *reconsideration denied,* 2025 WL 2074155 (D. Md. July 23, 2025) ("In light of Plaintiff's apparent class membership, claims relating to his potential third country removal are more appropriately resolved in the *D.V.D.* case and will not be

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addressed in this Court.") (footnote omitted); *Tanha v. Warden*, 2025 WL 2062181, at *5 (D. Md. July 22, 2025) (matters pertaining to Petitioner's removal destination are more properly addressed by the District of Massachusetts); *but see Nguyen v. Scott*, 2025 WL 2419288, *20-23 (W.D. Wash. Aug. 21, 2025); *Abubaka v. Bondi*, W.D. Wash. 25-cv-01889-RSL, Dkt. 15; *Baltodano v. Bondi*, W.D. Wash. 25-cv-01889-RSL, Dkts. 14, 22.

V. CONCLUSION

For the foregoing reasons, Petitioner's habeas petition should be denied and dismissed without an evidentiary hearing.

DATED this 24th day of November, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,524 words, in compliance with the Local Civil Rules.